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**Questionable Contract Actions  
Relating To Purchase Of  
AN/PRC-25 Radio Sets  
From Bristol Electronics, Inc.**

B-156971

**Department of the Army  
Small Business Administration**



**BY THE COMPTROLLER GENERAL  
OF THE UNITED STATES**

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FEB. 12, 1971



COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20548

B-156971

R Dear Mr. Gross:

The accompanying report presents the results of our review made at your request of questionable contract actions relating to the purchase of AN/PRC-25 radio sets from Bristol Electronics, Inc.

This review was made pursuant to the Budget and Accounting Act, 1921 (31 U.S.C. 53); the Accounting and Auditing Act of 1950 (31 U.S.C. 67); and the authority of the Comptroller General to examine contractors' records, as set forth in contract clauses prescribed by the United States Code (10 U.S.C. 2313 (b)).

We plan to make no further distribution of this report unless copies are specifically requested, and then we will make distribution only after your agreement has been obtained or public announcement has been made by you concerning the contents of the report.

Sincerely yours,

Comptroller General  
of the United States

The Honorable H. R. Gross  
House of Representatives

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D I G E S T

WHY THE REVIEW WAS MADE

R The General Accounting Office (GAO), at the request of Congressman H. R. Gross, reviewed the Army Electronics Command's purchase of AN/PRC-25 radios and RT-505 receiver-transmitters--a major component of the radio--from Bristol Electronics, Inc., New Bedford, Massachusetts.

GAO was requested to determine why the Small Business Administration issued a Certificate of Competency to Bristol a month after the Army decided Bristol could not perform the contract. GAO was also asked to determine the Army's basis for negotiating a \$1.4-million claim settlement with Bristol and for awarding another contract to Bristol in July 1969 for additional radios in view of Bristol's prior performance problems.

FINDINGS AND CONCLUSIONS

Certificate of Competency

A portion of the total requirement for radios to be purchased was set aside by the Army for award to a firm in an area with high unemployment. Bristol was one of the bidders for the set-aside portion. The Army found that Bristol lacked the necessary technical ability, facilities, and financial resources and had unsatisfactory performance on prior contracts and concluded that Bristol could not ensure contract performance. In July 1965--1 month later--the Small Business Administration disagreed and issued a Certificate of Competency to Bristol. In August the Army awarded a contract to Bristol to produce the radios at a cost of \$4.3 million. This amount was later increased to \$5.1 million as a result of changes. (See pp. 5 to 13.)

The Small Business Administration refused to furnish records to GAO which would show the basis for certifying Bristol's competence. It claimed that this information was privileged as well as within the scope of 18 U.S.C. 1905--the statute which subjects Government officials to penalties if they disclose certain confidential business information. GAO did determine, however, that the Small Business Administration had

reviewed the same aspects of the contractor's operations as had the Army. (See p. 11 and apps. III through VIII.)

The adverse factors cited in the Army's preaward survey could have contributed to Bristol's difficulties in performing the contract. Bristol failed to make scheduled deliveries, suffered serious financial problems, and had an apparent shortage of personnel with engineering talent and technical ability. (See pp. 24 and 25.) The contractor was initially required to deliver 8,554 radio sets by September 15, 1967, but had delivered only 92 by September 30, 1967. Actual deliveries as of October 31, 1969, totaled 8,198.

The claim submitted by Bristol

Bristol attributed its difficulties to actions of the Army and said that they resulted in Bristol's incurring substantial additional costs. Bristol filed a claim to recover these costs plus profit. (See p. 20.)

Bristol contended that other factors contributed to its delivery problems. One of these was that Government-furnished gauges used in testing the radio set components (modules) were unreliable and even if the modules passed the gauge tests they still required further tuning to operate efficiently. (See p. 28.)

The Army acknowledged certain inadequacies in the gauges and thought it conceivable that the Government could lose a larger sum (Bristol originally claimed \$3 million) if the claim were carried to the Armed Services Board of Contract Appeals. For this reason, and because Bristol's adjusted price was comparable to prices paid other contractors for the same radio sets, the Army elected to settle the claim. In April 1969, the Army agreed to pay Bristol \$1.4 million in addition to the contract price at that time--\$5.1 million. (See pp. 32, 33, and 36.)

The amount for which the claim was settled is questionable since reviews by the Defense Contract Audit Agency auditors and the Defense Contract Administration Region price analyst could establish no direct relationship between the amounts claimed and the additional costs arising from the factors used as the basis for the claim. (See pp. 33 and 34.)

All producers of the radio sets except Bristol have been required to meet gauge tests to ensure interchangeability of all modules, regardless of manufacturing source. The Army withdrew the gauges after Bristol's complaints and waived the test requirement to preclude Bristol from attributing any further delays to the gauges. So far as GAO could determine, the Government gauges posed no similar problems for other producers of the radio sets. (See pp. 29 and 30.)

The Army allowed an increased price for 6,032 uncompleted units as part of the settlement. This is questionable since the first of these units was not to be delivered until 9 months after the gauge requirements were withdrawn. Further GAO believes that an allowance should not have

been made in the claim settlement for increased costs alleged to have been incurred as a result of inspection requirements, since both the invitation for bids and the contract provided for their imposition at the discretion of the Government.

Further, GAO sees no reason for increasing the profit rate from 5 to 7 percent on the total costs claimed by the contractor when a 5-percent factor was included in its original bid. (See p. 37.)

Additional award

Additional orders for a total of 4,373 radio sets were placed with Bristol, low bidder on the solicitation, in July and August 1969. The Army decided that the contractor was capable of meeting the contract delivery schedule and bid price. GAO believes that Bristol's performance on the prior contract and its uncertain financial position cast serious doubt on the Army's conclusion. (See pp. 39 to 43.)

The Department of Defense and Bristol have provided GAO with written comments on the above report findings. (See apps. IX and XI.) These comments have been considered in the report.

RECOMMENDATIONS OR SUGGESTIONS

GAO recommends that the Secretary of Defense take steps to discourage settlement of claims based on total cost and require contractors to furnish documentary evidence showing the additional costs incurred because of the factors which form the basis of the contractors' claims. (See p. 38.)

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## CHAPTER I

### INTRODUCTION

The General Accounting Office, at the request of Congressman H. R. Gross (see apps. I and II), has reviewed the procurement by the Army Electronics Command of AN/PRC-25 radio sets and RT-505 receiver-transmitters from Bristol. In August 1965, Bristol was awarded a firm fixed-price contract, DA-36-039-AMC-07306(E), for \$4,321,810. Subsequent modifications increased the total contract amount to about \$5,104,000.

The award to Bristol was made by the Army following the issuance by the Small Business Administration of a Certificate of Competency. Concerning this action by the Small Business Administration, we were asked by Congressman Gross to determine:

1. Whether the certificate had been issued after the Army had determined, on the basis of the same facts, that Bristol was incapable of performance. (See p. 10.)
2. The Small Business Administration's explanation for its reaching a conclusion different from the Army's. (See app. VIII.)
3. The identity of the Small Business Administration individuals who made the review and arrived at the decision to issue the certificate. (See p. 15.)
4. Whether minutes of its meetings on the issuance of the certificate to Bristol were available and whether minutes of such meetings were normally maintained and available for examination by the General Accounting Office. (See p. 15.)
5. The Army's reasons for canceling a meeting scheduled with the Small Business Administration to discuss the certificate and whether anyone communicated with the Assistant Secretary of the Army, Installations and Logistics, just prior to the cancellation. (See pp. 14 and 15.)
6. The Army's basis for accepting the certificate. (See pp. 14 and 15.)

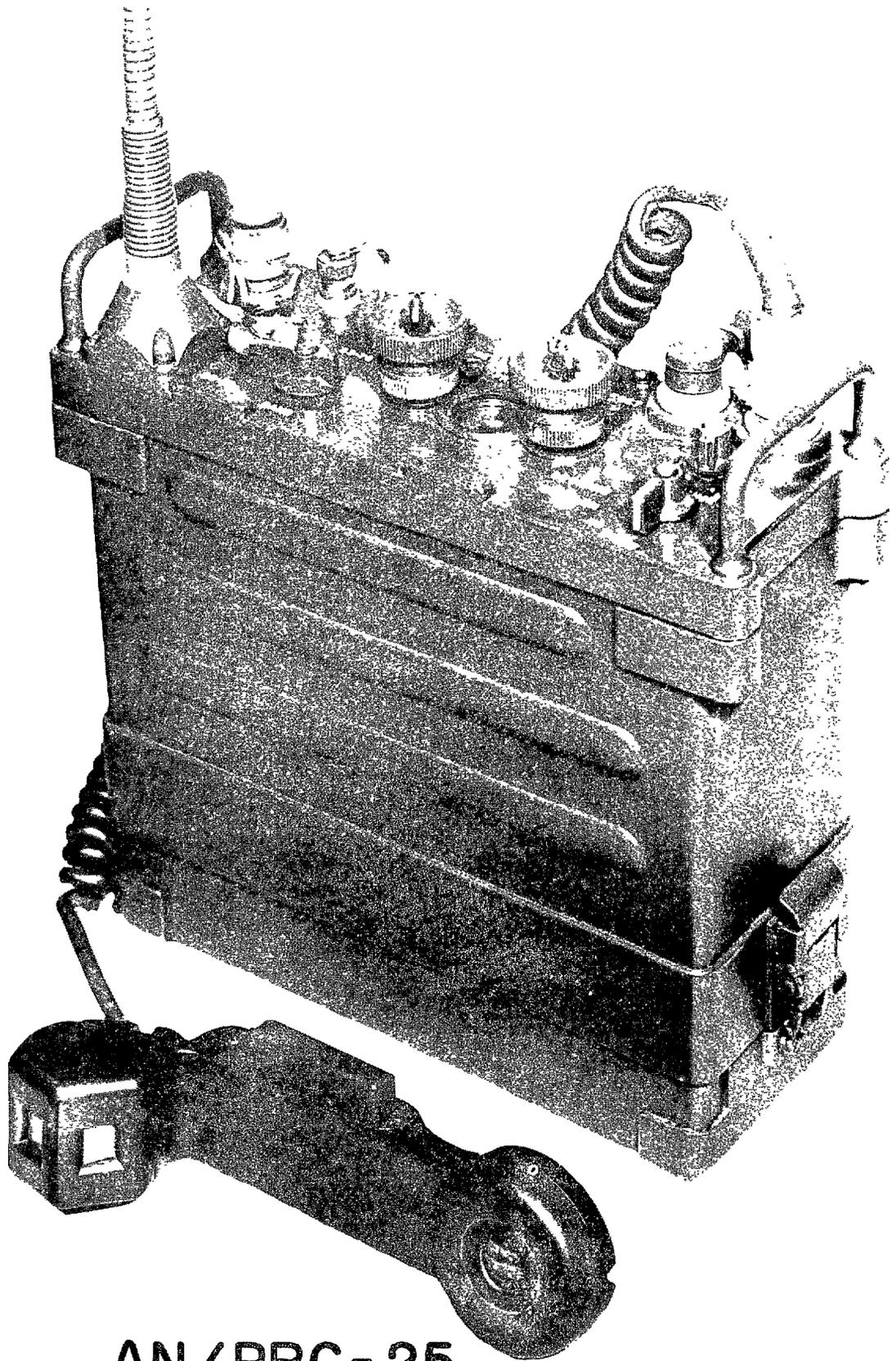
With respect to developments occurring after the award was made to Bristol, we were asked to determine:

1. Whether Bristol's difficulties in performing this contract were attributable to the negative factors disclosed by the Army's preaward survey. (See p. 25.)
2. The Army's reasons for waiving the electrical interchangeability test required by Bristol's contract. (See pp. 29 and 30).
3. The Army's basis for negotiating a \$1.4-million settlement on Bristol's appeal to the Armed Services Board of Contract Appeals. (See pp. 32 to 35.)
4. The Army's justification for ordering additional radio sets from Bristol in July 1969 in view of the contractor's previous performance record. (See p. 40.)

We were also asked to furnish a listing of persons having direct financial interests in Bristol. This list is included as exhibit A.

The AN/PRC-25 is a lightweight frequency-modulated radio set which is transistorized except for one vacuum tube in the frequency power output stage of the receiver-transmitter. It is carried by the serviceman. Its communications range is 3 to 5 miles. (See illustration, p. 7.) The RT-505 is a receiver-transmitter which is a major component of the AN/PRC-25.

In response to an invitation for bids issued on March 27, 1965, the Army received 14 bids and awarded the non-set-aside portion of its requirement to the lowest bidder, Model Engineering and Manufacturing Corporation (presently MEMCOR, Inc.), Huntington, Indiana, a division of LTV Electrosystems, Inc., at unit prices of \$505 for the AN/PRC-25 and \$500 for the RT-505. The unit prices of these radios were subsequently increased approximately \$90 each in response to MEMCOR's petition for monetary relief under



**AN/PRC-25**

provisions of Public Law 85-804.<sup>1</sup> MEMCOR initially encountered difficulties in producing acceptable units; however, these difficulties were finally resolved.

The second, third, and fourth low bidders were small business concerns situated in areas of high unemployment. This qualified them for consideration for the set-aside portion of the award. The bids submitted by these concerns were rejected by the Army's Contractor Evaluation Board primarily because of deficiencies in their capacity and credit. In its evaluation summary the Board stated that Bristol could not be considered technically and financially capable of ensuring satisfactory performance.

Under the provisions of the Small Business Act, these concerns could, upon such rejection, apply to the Small Business Administration for a Certificate of Competency--a conclusive certification by the Small Business Administration that a firm is competent, as to capacity and credit--to carry out the proposed contract.

The second low bidder, Ecco Electronic Components Corporation, Mount Vernon, New York, indicated that it would apply for a certificate; however, it subsequently withdrew its application. The third low bidder, Aerospace Support Equipment, Inc., Van Nuys, California, did not apply for a certificate.

The fourth low bidder, Bristol, applied for a certificate; on July 28, 1965, the Small Business Administration certified that Bristol was competent, as to capacity and credit, to perform the proposed procurement. Bristol had bid \$543 and \$495 for each unit of the AN/PRC-25 and RT-505, respectively, but subsequently agreed to lower its price for the AN/PRC-25 to \$505, to conform to that of the low bidder on the non-set-aside portion. The Army then awarded a firm fixed-price contract to Bristol on August 26, 1965, for 7,287 units of the AN/PRC-25 and for 1,267 units of the RT-505 at a total contract price of \$4,321,810.

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<sup>1</sup>This law provides that, upon application by a contractor and if necessary to the national defense, relief be granted without consideration.

Due to various technical changes and problems experienced in the manufacture of the end-item, including the settlement of a contractor claim for about \$1.4 million in April 1969, the unit prices of the AN/PRC-25 and RT-505 were increased to \$760 and \$755, respectively, and the contract's total value was increased to \$6,539,576. (See p. 18.)

In July and August 1969, orders for an additional quantity of 4,373 AN/PRC-25 radio sets were given to Bristol at a unit price of \$519. These orders increased the total contract price to \$8,808,288.

On the initial award to Bristol, two protests were filed with our Office. In one, Bristol protested possible awards to either Ecco or Aerospace. Because these two concerns had received negative evaluations by the Army and had decided not to apply for a Certificate of Competency, the basis for Bristol's protest ceased to exist.

In the other, MEMCOR protested the possible award to Bristol, claiming that Bristol did not have the technical ability, production facilities, or financial resources to produce the equipment in accordance with the contract terms. MEMCOR in its protest also questioned the Small Business Administration's judgment in issuing a certificate to Bristol in view of the negative evaluation by the Army regarding Bristol's qualifications.

On August 23, 1965, after considering statements obtained from the Small Business Administration and from the Army and after reviewing the Small Business Administration's file, we rendered a decision on MEMCOR's protest (B-156971). The decision states that, under applicable provisions of the law and regulations, the issuance of a certificate by the Small Business Administration is conclusive on the contracting officer with respect to a small business bidder's capacity and credit to perform the specific Government contract. This decision did not include an evaluation of the basis for the issuance of the certificate by the Small Business Administration.

The scope of our review appears on page 46.

## CHAPTER 2

### REVIEW OF ISSUANCE OF CERTIFICATE OF COMPETENCY

#### ARMY'S REASONS FOR PROPOSING TO REJECT BRISTOL'S BID AND SMALL BUSINESS ADMINISTRATION'S BASIS FOR ISSUING A CERTIFICATE OF COMPETENCY

On June 24, 1965, the Boston Regional Office of the Small Business Administration learned of the Army's proposed rejection of Bristol's bid on the basis that Bristol did not have the capacity or the credit to perform the proposed contract. The Small Business Administration, in turn, advised the contractor of its rights under the Small Business Act to apply for a Certificate of Competency. On June 28, 1965, Bristol submitted the necessary applications for a small business determination and for a certificate.

Early in July 1965, the Small Business Administration's Boston Regional Office reviewed Bristol's financial and productive capabilities. This review included a visit to the Bristol facility. The regional office concluded that Bristol had available the necessary organization, skills, personnel, facilities, equipment, and supplies required to meet the quantity, quality, and delivery requirements of the proposed contract. It was the regional office's opinion that financial resources generated from operations and profits of the business, together with progress payments and a line of credit established with a Boston, Massachusetts, bank, would be sufficient to support contract performance.

In our review of the Small Business Administration's Boston Regional Office files pertaining to Bristol, and in our discussions with its personnel, we found that the Small Business Administration examination had covered both financial and technical aspects of Bristol's operation. Although the scope of the review performed by the Small Business Administration paralleled that of the Army review and dealt with the same points reviewed a month earlier by the Army, the conclusions reached by the Small Business Administration review team were favorable to Bristol. These

conclusions were approved by a Certificate of Competency Review Committee at the regional level, which then recommended to the Review Committee at Small Business Administration headquarters in Washington, D.C., that a certificate be issued.

On July 28, 1965, the Office of the Administrator, Small Business Administration, notified the Army that, pursuant to section 8(b)(7) of the Small Business Administration Act, Bristol had been certified as competent as to capacity and credit. We were unable to satisfactorily evaluate the Small Business Administration's basis for granting the certificate because it refused to furnish us with its complete records relating to its decision on the basis that the records contained confidential business information within the scope of 18 U.S.C. 1905. This statute subjects Government officials to penalties if they disclose such information. The records were also said to consist of internal administrative procedures and communications which the Small Business Administration officials considered privileged.

The following table contains the conclusions of the Small Business Administration and of the Army in their respective preaward surveys. The table was prepared from information furnished by the Small Business Administration and from information contained in the Army's files, which we did not independently evaluate.

Small Business Administration's  
Reasons for Issuance of a  
Certificate of Competency to Bristol

1. Bristol had a satisfactory record of completion of contracts obtained previously through the issuance of Certificates of Competency.
  
  
  
  
  
  
  
  
  
  
2. Bristol's productive facilities were adequate for producing the equipment required in accordance with the terms of the contract under consideration and were readily available for that purpose.
  
  
3. An adequate staff, including labor, technical, and professional manpower, was available to Bristol.
  
  
4. The necessary materials, supplies, and subcontracted components and services were available as needed by Bristol.
  
  
5. Bristol's management was experienced and capable of meeting all management requirements imposed by the contract.
  
  
6. Financing in the amount needed to perform a contract resulting from the invitation for bids would be made available pursuant to a signed commitment by a bank that had previously acted in the same capacity for Bristol.

Army's Basis for Issuance of Negative  
Preaward Survey on Bristol's Ability to  
Perform Proposed Award

1. Unsatisfactory prior performance on Government contracts because of delinquencies in deliveries of from 1 to 3 months on the following contracts for components of radio sets.

<u>Contract</u>	<u>Item</u>	<u>Delinquency</u>
DA-04396(E)	Control, C-2297/VRC intercommunications set	80 days
	C-2298/VRC	30 "
DA-01880(E)	Control, C-2297/VRC intercommunications set	90 "
DA-02952(E)	C-2298/VRC intercommunications set	Delinquent

2. Lack of necessary technical facilities to perform incoming inspection and to evaluate engineering-type problems should they occur.
3. Lack of adequate engineering talent on hand or available.
4. Inadequate plan for production with no make-or-buy program, quotations, or established sources for subcontractor or material supplies.
5. Lack of experience in producing such equipment as complex as the AN/PRC-25 radio set.
6. Question as to whether Bristol had sufficient capital and/or credit to finance an award of this size. An Army financial specialist analyzed Bristol's financial history for 4 years. He then stated for the record that the size and complexity of the proposed award of over \$4,000,000 when related to the company's capital and prior sales achievements gave rise to concern. He concluded that the placing of an award of this magnitude with the contractor would not be in the best interest of the Government.

ARMY'S BASIS FOR ACCEPTING  
CERTIFICATE OF COMPETENCY ISSUED BY  
SMALL BUSINESS ADMINISTRATION

It is the policy of the Department of Defense to attempt to resolve differences between the Small Business Administration and a military department regarding the issuance of a Certificate of Competency through a complete exchange of preaward survey information. The Armed Services Procurement Regulation provides that, in the event a certificate is issued and the contracting officer has substantial doubt as to the ability of the contractor to perform, the matter be referred to higher authority for instructions.

The contracting officer, after being notified through Army channels that the Small Business Administration intended to issue a certificate to Bristol, attempted to obtain the information developed by the Small Business Administration's Boston Regional Office for evaluation. The regional office advised the contracting officer that the files had been forwarded to the Small Business Administration headquarters.

The contracting officer then recommended that an informal meeting be held with the Small Business Administration in Washington, to further explore the basis on which Bristol had been qualified for a certificate.

A proposed meeting with Small Business Administration personnel was arranged by an Army Materiel Command official; however, it was subsequently canceled. An internal memorandum from officials of the Electronics Command stated only that an official in the Office of the Assistant Secretary of Defense (Installations and Logistics) had canceled the meeting on the basis that there was no further need for extensive and prolonged discussion since all available preaward evaluation data on hand had been furnished to the Small Business Administration.

We have determined that the authors of this memorandum erroneously designated the office of the official; he actually was in the Office of the Assistant Secretary of the Army (Installations and Logistics). The memorandum directed

the contracting officer to proceed with the necessary award action on the basis of the certificate. The contracting officer then awarded the contract to Bristol.

We attempted to obtain additional information regarding the cancellation of the proposed meeting between the Army and the Small Business Administration. We interviewed the individual serving as the Assistant Secretary of the Army (Installations and Logistics) at the time of the award, as well as the official in his office identified in records available at the Electronics Command as the one who canceled the proposed meeting. Neither official could recall canceling such a meeting. Personnel in the Assistant Secretary's office told us that the office files contained no information relative to the cancellation. We were, therefore, not able to investigate further into the basis for the cancellation or to determine whether anyone communicated with the official, identified as having canceled the meeting, just prior to the cancellation.

ATTEMPTS TO OBTAIN ADDITIONAL INFORMATION  
FROM SMALL BUSINESS ADMINISTRATION

We also met with representatives of the Small Business Administration to obtain information pertinent to our examination. They advised us to submit our request in writing. On October 24, 1968, we wrote to the Small Business Administration and requested that we be furnished with the file relating to the issuance of the certificate to Bristol. (See app. III.)

An exchange of letters followed over a period of more than 2 months during which we were unsuccessful in obtaining the information we had requested. (See apps. IV through VII.) Finally, in a letter dated December 31, 1968, the Small Business Administration furnished us with the basis for its decision to issue a certificate to Bristol but claimed that information we were requesting, as to (1) who made the review for the Small Business Administration Certificate of Competency Committee, (2) who were the members of the committee, and (3) the contents of the minutes of such meetings, was privileged. (See app. VIII.) We, therefore, have been unable to obtain this information.

AGENCY AND CONTRACTOR COMMENTS AND  
GAO EVALUATION

Small Business Administration

The Small Business Administration, in commenting on a draft of this report (see app. X), concluded that the information presented, insofar as it pertained to the Small Business Administration, was substantially the same as that contained in its files. The decision to issue a Certificate of Competency, according to the Small Business Administration's reply, was based upon thorough investigation and evaluation of all available facts bearing on Bristol's capacity and credit. Because of subsequent events, i.e., Bristol's performance of the contract, the Army's settlement of Bristol's claim in the amount of \$1.4 million, and an award to Bristol for 4,373 additional radios, the Small Business Administration felt that its judgment had been corroborated.

Additionally, the comments cite our decision (B-156971, August 23, 1965) which denied a protest against the issuance of a Certificate of Competency in this case and which held that the issuance by the Small Business Administration of such a certificate is conclusive on the contracting officer with respect to a small business bidder's capacity and credit to perform a specific Government contract.

We do not agree that subsequent events vindicated the Small Business Administration's judgment in this matter. As indicated further in the report, the contractor's deliveries were late; the quality of the completed sets was questionable; and the contractor advised the Government on two occasions during 1968 that, because of financial problems, the contractor was unable to comply with the established (production) schedules.

Department of the Army

A draft of this report was also submitted to the Department of Defense for its review and comment. The Department of the Army, replying on behalf of the Department of Defense (see app. XI), stated that, in discontinuing its efforts to persuade the Small Business Administration to withdraw

Bristol's Certificate of Competency, it had deferred to that agency's judgment that Bristol could perform the contract satisfactorily.

Bristol Electronics, Inc.

Bristol was also invited to comment on GAO's draft report. Bristol's reply (see app. IX) included the contention that the Small Business Administration's evaluation of Bristol was performed in a detailed and professional manner while that of the Army's personnel team was brief, cursory, and predetermined.

In examining into the Army's evaluation of Bristol's capacity to perform, we found that it covered all major aspects of the prospective contractor's operations and included evaluations of the adequacy of its engineering and technical staff, record of contractual performance on prior contracts, plans for a make-or-buy program, availability of subcontractors and material suppliers, prior experience with military-type radio receivers or transmitters, technical facilities for inspection of incoming parts, and an analysis of the contractor's current and prospective financial capability.

### CHAPTER 3

#### BRISTOL'S PERFORMANCE RECORD

##### CONTRACT PRICE INCREASED SIGNIFICANTLY FROM AWARD PRICE

Bristol was awarded the labor set-aside portion of an advertised procurement at a unit price of \$505 for the AN/PRC-25 and \$500 for the RT-505. Changes and technical problems experienced by the contractor, which resulted in delay claims, constituted the bulk of the \$255 a unit by which the initial award price was increased as of September 1969.

##### CONTRACTOR DID NOT MEET DELIVERY SCHEDULES

Our review of Bristol's performance under the subject contract and the subsequent add-on award shows that Bristol experienced considerable difficulty in meeting delivery schedules. Although the Army considered taking action to terminate the contract, it did not do so because of its continuing need for whatever radios might be produced. Under the terms of the initial contract, production of the first units was to begin during October 1966. Deliveries were scheduled to peak at 850 units a month starting in January 1967. Delivery of the total contract quantity of 8,554 units was to be completed by September 1967. The contractor did not meet the original delivery schedule set forth in the contract, nor did it meet the delivery schedules set forth in revisions that had been made up to October 1969. (See chart, p. 21.)

Under the first revision, delivery of initial units was postponed 8 months to June 1967, with delivery of final units postponed 10 months to July 1968. This revision of the delivery schedule was due, in part, to the additional time necessary to incorporate some 54 engineering changes (referred to as Technical Action Requests) initiated through mid-April 1967. Of the 54 changes, 35 were initiated by the contractor and 19 by the Government. Only one Government-initiated Technical Action Request (No. FEB-7) appears to have had any

significant impact on the delivery schedule. This request included the changes made to the contract through January 13, 1967, and resulted in an increase of over \$600,000 to the contract price. Bristol had contended that the various changes would cause a 313-day delay in the contract delivery schedule.

In modifying the contract to reflect the negotiated price increase for this Technical Action Request, the Government acknowledged that the changes contained in the request caused a 283-day delay, and this was reflected in the first revision to the contract delivery schedule. It appears that a problem with Government-furnished gauges was not involved in this price change.

The contractor made shipments of the first 48 units in June 1967 but made no shipments in July 1967. Consequently, on August 1, 1967, the Government notified the contractor that it was considering terminating the contract for default and requested the contractor to show why such action should not be taken. The contractor replied that it had not breached the contract and cited unresolved technical problems as the primary cause of delay.

The contractor proposed to complete deliveries by November 1968 if the Government would:

1. Make available additional test equipment it claimed was needed because of the Government's invoking class A mandatory inspection. (See p. 23.)
2. Establish and resolve all questions on the application and usefulness of gauges provided by the Government for testing modules.
3. Authorize shipments prior to group C tests<sup>1</sup> which deal with dimensional and design aspects of the equipment.

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<sup>1</sup>A group C test is the final inspection performed at the contractor's plant on two units selected from each lot.

On September 27, 1967, the contracting officer agreed to the third condition of the proposal with the provision that Bristol agree to correct any defects in equipment previously accepted and shipped that were discovered as a result of the group C test. The contracting officer revised the delivery schedule a second time to extend the completion date to November 1968, as proposed by the contractor. However, he did not accept the other two conditions on which Bristol had predicated its revised delivery schedule. As a result, the contractor appealed the contracting officer's decision to the Armed Services Board of Contract Appeals on January 29, 1968. (See p. 28.)

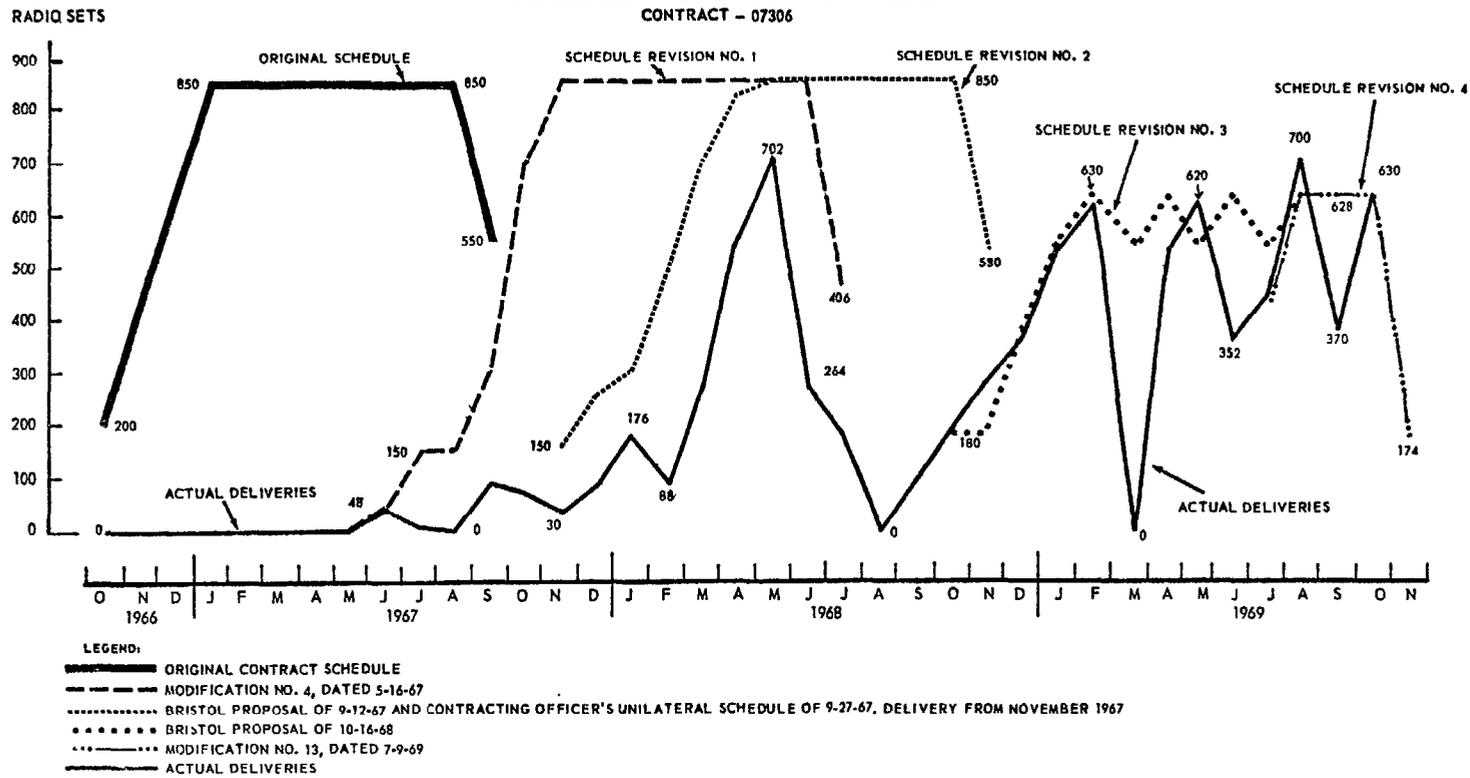
In July 1968, the Army decided to negotiate Bristol's claim for reimbursement of increased costs allegedly incurred. This claim was settled on April 19, 1969, and the appeal was withdrawn. The contract price was increased about \$1.4 million, and the delivery schedule was modified to require monthly deliveries of 630 radios with deliveries to be completed by October 15, 1969.

From the date of the Bristol claim until the decision in July 1968 to negotiate, the Army continued to extend Bristol's delivery dates. This course of action, rather than termination, was recommended by the Boston Defense Contract Administration Services Region. Bristol during this time was experiencing a financial crisis. It appears that termination would have put Bristol into bankruptcy. The Army believed that, Bristol, even with the problems it experienced, could have produced and delivered 500 radios a month.

In July and again in August 1968, Bristol advised the Government that it was unable to comply with the established schedules as a result of financial problems. The contracting officer, in October 1968, requested that the contractor provide concrete evidence that it was making adequate progress toward full production, or the Government would have no choice but to proceed with a default action. In its reply Bristol indicated its willingness to produce and identified changes in management and other remedial steps taken. It also proposed a revised delivery schedule with deliveries to begin in October 1968 and to be completed by September 1969.

BEST DOCUMENT AVAILABLE

SCHEDULED DELIVERIES VERSUS ACTUAL DELIVERIES  
CONTRACT - 07306



This schedule was not formally accepted by the contracting officer; nevertheless, he used it to monitor the contractor's performance. The schedule, which called for deliveries of 540 and 630 on alternate months beginning in January 1969, was maintained by the contractor until March 1969 when it again became delinquent.

After the claim was settled in April 1969, with the resulting change in delivery schedule, Bristol immediately became delinquent. By modification 13 dated July 9, 1969, the Government agreed to still another schedule revision extending deliveries to November 1969. The need for this revision allegedly arose from the Government's delay in releasing funds to Bristol from the claim settlement. As of the end of October 1969, the contractor was still delinquent, having delivered 8,198 of the 8,554 radios required under the original contract. In October 1969, Bristol contended that it was delinquent because the delivery schedule revisions negotiated did not include sufficient production lead time. This contention, it should be noted, referred to a contract under which deliveries were to have begun 3 years earlier.

FACTORS CONTRIBUTING TO  
CONTRACTOR'S LATE DELIVERIES

The Army continually revised Bristol's delivery schedule, without penalty to the contractor, through modification 13 in July 1969. We found that the earlier delinquencies might have been attributable, with some justification, to engineering changes initiated by both Bristol and the Government. This does not appear, however, to be the case with the later delays.

Bristol asserted that the delinquencies were caused by certain Government-initiated actions, as follows:

1. Class A mandatory inspection--This inspection, invoked by the Army in November 1965, is separate and apart from the inspections performed by Bristol's personnel. After the contractor's personnel have completed their inspection, as provided by the contract and in conformity with military specifications 55137A as amended, the Government inspections of the same items are performed by quality assurance personnel of the Defense Contract Administration Services Regional Office, using the same procedures as those followed by the contractor. As provided by the contract, Bristol is required to supply the necessary test equipment. Contract-07306 provides, in part, with respect to inspection, as follows:

"K. STATISTICAL SAMPLING INSPECTION:"

\* \* \* \* \*

- "2. The extent of Government verification inspection shall be determined by the Government and will include maximum utilization of the contractor's inspection records and the quality history of the contractor's product. Such inspection will not exceed the definitive quality assurance provisions established in the specification, contract, or order, except that the Government reserves the right to perform any amount of inspection (including

100% inspection) when the contracting officer determines such additional inspection is required."

Bristol contended that the Government's requiring this inspection constituted a change to the contract which the contractor could not have anticipated from the terms and conditions of the invitation for bids. The contractor also maintained that additional test equipment should have been provided by the Government. Bristol contended further that processing time had been increased and that the rate of production thereby had been adversely affected.

2. Requirements for additional gauge tests--The requirements for these gauge tests are set forth in military specification 55137A. The purpose of the tests is to ensure interchangeability of all modules regardless of manufacturing source. Bristol contended that its modules passed quality assurance tests on its own production test fixtures and worked in the radio sets but that its modules did not always pass the interchangeability requirement of the Government gauges without extensive repair and realignment. On this basis, the contractor asserted that the Government gauges were deficient.

Bristol first mentioned possible problems with gauges in late 1966. Numerous conferences and discussions were held on this matter, and during November 1967 all electrical gauges were removed from Bristol's facility and returned to Fort Monmouth, New Jersey, for test and recalibration. Pending return of the gauges, Government inspection of modules for interchangeability was waived. Nevertheless, on March 11, 1968, Bristol claimed that, because of deficient gauges, it had to initiate several changes to its production setup for testing modules, which resulted in production delays and increased costs.

The Government did not accept Bristol's contentions; as a result Bristol appealed these matters to the Armed Services Board of Contract Appeals for settlement. (See p. 28.)

During July, August, and October 1969, Army engineering and quality assurance personnel maintained that the radio

was too sophisticated for Bristol to produce and that the problems encountered by Bristol, such as the use of the gauges, resulted directly from a lack of technical ability and engineering talent. Bristol disagreed.

Army procurement personnel have advised us that Bristol's price was just too low. We believe that this contributed to the financial problems encountered by Bristol during the course of the contract. To date, this has been borne out by the experience of the other producers; no other contractor has delivered these radios to the Army for much less than \$600<sup>1</sup> a unit.

It is our opinion that the adverse factors cited by the Army in its preaward survey of Bristol could have contributed to Bristol's difficulties in performing the contract. This is illustrated by instances of Bristol's inability to meet delivery schedules and by its apparent shortage of personnel with engineering talent and technical ability.

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<sup>1</sup>MEMCOR, under the non-set-aside portion, had an adjusted unit price of \$595. Its lowest unit price on all subsequent awards was \$677.

## CONTRACTOR COMMENTS AND GAO EVALUATION

### Bristol Electronics, Inc.

Regarding its deliveries under the subject contract, Bristol stated that, although the contract was originally scheduled for completion by September 1967, various events, such as Government-directed major changes without advance notice, had had a very serious impact on its ability to obtain material and had destroyed its production plans and its cash-flow projections.

On page 3 of its comments, Bristol took exception to delivery delinquency data presented by the Army (see p. 13.) in connection with its preaward survey of Bristol's performance record on three prior contracts for components of radio sets. Bristol contended that the Army's data were erroneous and that deliveries of certain components were completed ahead of schedule or were not delinquent to the extent shown by the Army. It should be noted, however, that the delinquency data presented by the Army reflect the status of deliveries at the time of the preaward survey, not at the time of completion of the contracts.

Bristol reiterated its contention that production was adversely affected because the electrical test fixtures (gauges) were not suitable for their intended use and because the Government imposed class A mandatory inspection.

Bristol's summation of its performance was that never once did its quality fall down and that it had the highest quality of all manufacturers. Bristol's contention is not borne out by reports made available to us by the Army depot responsible for final testing of the radio sets. These reports show that 408 (18 percent) of the 2,256 sets shipped by Bristol as of August 26, 1968, and accepted by the Defense Contract Administration Services regional inspectors had been rejected when rechecked at the depot. We were informed that these defects were considered major in that the radios could not operate or be issued until repaired.

As indicated on page 19, the Government accepted responsibility for some of the delays encountered by Bristol.

In recognition of this, the delivery dates in the contract were extended several times; nevertheless, the contractor was seldom able to meet them.

## CHAPTER 4

### REVIEW OF SETTLEMENT OF BRISTOL'S CLAIM

#### BRISTOL'S BASIS FOR CLAIM

Bristol claimed that the addition of class A mandatory inspection as a contract requirement constituted a change to the contract and substantially increased the cost to manufacture the radios and that the increased cost could not have been anticipated from the terms and conditions of the bid solicitation.

Bristol claimed also that the Government was requiring that successful interchangeability of the modules be established by tests to be performed on Government-owned gauges which were deficient and that these tests therefore would not reliably establish the usability or interchangeability of the modules.

In a test conducted in February 1967, Bristol demonstrated that modules known to be defective and having missing parts could pass any acceptance test when tested on the Government's gauges but that other modules which worked in the radio would be rejected after testing on the gauges.

The contractor attributed increased manufacturing and rework costs to the Government fixtures. It explained that modules produced and tuned to the Government's gauges had to be retuned to function properly in the radio; Bristol's position was that the retuning caused the modules to be rejected and that the retuning was outside the scope of the contract.

In Bristol's appeal to the Armed Services Board of Contract Appeals it claimed the additional direct cost incurred to be \$577,000. This estimate was subsequently revised to \$822,000 total cost plus profit and revised again to \$3,022,000 in October 1968.

#### ARMY'S REVIEW OF BRISTOL'S CLAIM

On the basis of their review, the Army's trial attorneys concluded that Bristol had established a prima facie

case that the Government's gauges were defective. As a result, the attorneys requested from engineers at the Electronics Command affirmative evidence that the contractor had received notice that module retuning was necessary and that the problem, in producing modules which would pass gauge testing and operate to specifications in the end-item, could be attributed to something other than the gauges or the parameters measured. In the absence of such evidence, they felt that the Government's case was impaired and that negotiations should be conducted.

The engineers could supply no such evidence. They told us that, in their opinion, the requests of the Army's attorneys were unreasonable. They contended that it should have been evident from the drawings that the modules were tunable and that therefore Bristol should have realized without further notice that retuning may have been required. They stated that Bristol did not have the engineering talent or technical ability to refine their production technique to narrower limits than measured by the gauges. In the engineers' opinion, this was the problem and it involved a lack of production know-how which could be associated with the negative factors disclosed in the Army's preaward survey.

Army and Defense Contract Administration Services Region quality assurance personnel have indicated that there were certain inadequacies in the Government's gauges and have questioned whether they ensured interchangeability.

The Electronics Command engineers recognize that the gauge tests are not the best means of testing the overall performance of the electrical components but believe that the gauges are an acceptable compromise at a realistic price. They believe also that the gauges do ensure module interchangeability.

The use of the Government's electrical gauges under the Bristol contract ceased in November 1967 because of the complaints made by Bristol. The electrical gauges were not used subsequent to that time, and the test requirement was formally waived by the Electronics Command in June 1969. We were informed that the Electronics Command engineers had agreed to the nonuse and waiver to preclude Bristol from using this requirement as an excuse for further delay. All

producers of the radio set, except Bristol, have been required to meet the electrical interchangeability test requirement. So far as we could determine, the Government's gauges posed no similar problems for these producers.

In July 1968, the Army decided to negotiate Bristol's claim.

## NEGOTIATION OF BRISTOL'S CLAIM

In October 1968, Bristol, at the request of the Army's trial attorneys, submitted a proposal in support of its claim. The proposal was compiled on a total cost basis and consisted of the actual cost of 2,522 radios completed and delivered up to August 31, 1968, the estimated cost to complete the 6,032 remaining radios, and the estimated cost for 16,000 rejected modules. From this amount Bristol subtracted the contract price inclusive through modification 10, resulting in the \$3,022,000 claimed. Army procurement personnel and the contractor and its certified public accountant informed us that Bristol's records provided no other basis for proposing a settlement since costs were not accumulated by problem area or contract modification.

We asked the contractor if it could provide us with a breakdown of the costs upon which its claim was based. We were informed that this was not possible as records were kept on a total cost basis.

The Defense Contract Audit Agency questioned \$1,576,000 of the contractor's proposed redetermined contract price and, concerning the basis upon which the claim was proposed, stated:

"The method used by the contractor in determining its claim is in effect an entire repricing of the contract. No effort was made by the contractor to isolate and identify either the losses purportedly caused by the Government gages (SIC) or the Government caused delays. To accept the method used by the contractor is to assure the contractor of a profitable performance. There is no relationship between the contractor costs as claimed and the contract costs as awarded. This contract was awarded on a labor surplus area set-aside for small firms. In fact, the contractor had to reduce its original bid price to receive the award. Therefore, to accept this repricing action is tantamount to negating the risk inherent to fixed price contracts and contrary to the provisions of ASPR. Therefore, we are unable to

make definitive audit recommendations and it must not be construed that the audit results shown below and detailed in Exhibit A pertain to the gauge and delay claim. The audit performed of the costs incurred and projected and the audit recommendations are to be considered merely a method to provide the Contracting Officer with available means for negotiating a settlement in the Government's best interest."

We believe that the above position fairly disclosed the inadequacies of the contractor's method of arriving at its claim. In our opinion, however, it raises a question as to the degree of reliance that could be placed on the \$1.4-million balance of the contractor's claim which the Defense Contract Audit Agency did not specifically question. It appears that the Agency's report, by not taking a position on this balance, permitted an interpretation by the contracting officer that it was not questionable.

The Defense Contract Administration Services Region price analyst also reviewed the Bristol claim and considered its worth to be about \$21,000 for the rejected modules plus an unspecified amount for delay costs which would be the contractor's responsibility to present and support. He stated that Bristol's method of proposal had failed to specifically identify cost associated with Government actions but, on the contrary, had represented a repricing of the entire contract.

The contracting officer initiated negotiations relying on the Army attorneys' opinion that the contractor had established a prima facie case for entitlement that could not be rebutted before the Armed Services Board of Contract Appeals and that it was conceivable that the Government could lose the entire \$3,022,000 claimed.

Although it is conceivable that the Government could lose the entire \$3,022,000 claimed if the matter went before the Armed Services Board of Contract Appeals, it is also possible that, if the weaknesses in the contractor's claim brought out in this report were to be presented to the Board, the contractor might have received considerably less than the settlement.

We believe that the possibility that the Board conceivably might award more is not a sound basis for justifying a settlement. The matter is speculative. The Board, being an impartial third party, should be in a position to render a fair verdict.

Negotiations were conducted that resulted in an agreement, subject to approval by the Electronics Command, by which the Government would increase the contract price by \$1,435,176, take title to approximately 16,000 modules, convert a partial termination for default on a second contract held by Bristol to a partial termination for convenience, formally reduce the monthly delivery requirement to 630 radios, and extend the contract completion date to October 1969. In return, Bristol was to waive all claims against the Government, except for one Technical Action Request; withdraw its appeal to the Board under this contract; and waive all claims against the Government relating to the second contract.

An April 1969 briefing given to the Commanding General of the Electronics Command resulted in affirmation of the acceptance of the negotiated offer. In addition to the consideration given to factors previously discussed, consideration was given to Bristol's adjusted price as being in line with prices paid for the radio sets to other contractors and to the expectation of good yield from the rejected modules. The Electronics Command's chief counsel recommended that the Bristol offer be processed for approval by the Board; however, this was rejected on the grounds that, if Bristol did not receive the money from the adjustment immediately, the delays inherent in processing the offer at that time would force Bristol into bankruptcy and the advantages of a settlement would be lost.

It is our opinion that there can be no realistic evaluation of the contractor's claimed additional costs unless these costs are identified with the matters under dispute. Bristol's claim essentially concerned the testing of the modules on the gauges that it claimed were unreliable and the resulting rework of the modules. We found no evidence that the contractor had been required to support the claimed additional costs. In our view, the settlement of the claim was questionable, since reviews of the claim made by the Defense

Contract Audit Agency and the Defense Contract Administration Services Region price analyst could establish no direct relationship between the amounts claimed and the additional costs arising from the factors used as the basis for the claim.

We believe that comparison of the adjusted prices with prices paid to other contractors for the radios is of doubtful value as an indicator that the settlement of the claim was reasonable. The contract involved was a firm fixed-price-type contract with no provision for repricing it to bring it into line with the prices paid to other contractors. The contractor's claim was for damages resulting from certain actions of the Government. Unless the other contractors had similar claims, it appears to us that the price paid to them would not be relevant.

Further, saving Bristol from bankruptcy did not appear to us to provide any assurance that the Army would receive good quality radios on a timely basis. The Army had experienced quality and delivery problems with this contractor.

AGENCY AND CONTRACTOR COMMENTS  
AND GAO EVALUATION

Department of the Army

The Department of the Army agreed that Bristol's claim had been settled by mutual agreement without establishing a relationship between the amounts claimed and the alleged causes of the increased costs. The Army disagreed, however, that the settlement of the Bristol claim had been improper, since the Court of Claims and the Armed Services Board of Contract Appeals allow a settlement to be made in this manner when a contractor's accounting system is not structured to permit costs to be allocated to specific claims; the contractor's costs are found to be reasonable; and the evidence is sufficient to allow a fair and reasonable approximation.

It appears to us that the Court of Claims does not favor this type of settlement. The court, however, has stated that this type of settlement may be used only where there is no other alternative. Also, both the price analyst and the Defense Contract Audit Agency, whose function it was to audit the contractor's proposal, pointed out that there was no assurance that the amounts claimed were the result of the Government's actions and not the result of an unreasonably low bid, contractor inefficiency, or other actions by the contractor.

We believe that, as a matter of sound business practice, settlement of claims by contracting officers on a total-cost basis is undesirable and should be avoided.

In our opinion the settlement of claims on a total-cost basis can result in a firm fixed-price contract's becoming, in effect, a cost-type or a redeterminable-type contract without the controls normally present in such contracts and can destroy the inherent incentive for cost control contained in firm fixed-price-type contracts.

Bristol's monetary claim was made up of three parts, as follows:

1. Claim for a revised cost for 2,522 units shipped as of August 31, 1968, submitted on the basis of total

costs incurred from inception. This cutoff date was used by the contractor to coincide with its fiscal year-end. Bristol originally claimed costs of \$2,144,827 for 2,522 units. The Defense Contract Audit Agency questioned \$548,347 of these costs as being duplications, incorrect rate calculations, or mathematical errors. Bristol, for the most part, concurred in the costs questioned, and a net amount of \$1,596,480 was agreed to in negotiations.

2. Claim for a revised cost, based on projected costs, for 6,032 units to be shipped subsequent to August 31, 1968. The contracting officer accepted costs in the amount of \$4,306,185 for these units.
3. Claim for \$319,153 for an estimated 18,000 scrapped modules. Only 16,000 modules were found in inventory. As a result of this reduction in quantity and other adjustments, the parties agreed to a settlement of \$208,714 for these modules.

In addition, the contracting officer allowed an increase in the profit rate on the above costs to 7 percent from the 5-percent rate included in Bristol's breakdown of the original contract price. The total profit allowed on the above costs amounted to \$427,797, resulting in a total cost plus profit of \$6,539,176. The difference between this amount and the total contract value of \$5,104,000 was \$1,435,176, the net amount at which Bristol's claim was settled.

Bristol's contention (see p. 28) that imposition by the Government of class A mandatory inspection requirements constituted a change in the scope of the contract and thereby increased processing time and adversely affected the rate of production is not, in our opinion, substantiated by the facts. Both the invitation for bids and the contract itself contained the clause reserving to the Government the right to perform up to 100-percent inspection. Therefore we believe that no allowance should have been made in the claim settlement for increased costs alleged to have been incurred as a result of inspection requirements that were known at the inception of the contract.

On March 22, 1968, the contracting officer advised Bristol that it had an obligation under the quality assurance provisions of the contract to make available necessary test equipment and facilities required for use by Government inspectors. It was the contracting officer's decision that test equipment required by the Government inspector was reasonable and must be furnished by Bristol. He stated, therefore, that Bristol was not entitled to any increase in contract price for the cost of test equipment or to any change in the other terms of the contract. Further, we could find no evidence that Bristol purchased any additional test equipment because of the imposition of class A mandatory inspection requirements.

Bristol's claim was based largely on the contention that faulty Government-furnished electrical gauges had necessitated increased costs for module alignment, repair, and realignment. The Army acknowledged its responsibility for some of the production delays encountered by Bristol.

The requirement for use of electrical gauges, however, was discontinued in November 1967, about 9 months before the cutoff date of August 31, 1968, for allowance of increased costs for the 2,522 completed units. In view of this, we believe that the Army's basis for allowing an increased price for the 6,032 uncompleted units, the first of which was not to be delivered until 9 months after the gauge requirement was withdrawn, is questionable. Further, we see no reason for increasing the profit rate from 5 to 7 percent on the total claimed costs. The lower 5-percent-profit factor was included in the contractor's original bid.

In our opinion, the proper method for settling Bristol's claim should not have been what amounted to a repricing of the contract. Although both the Army and Bristol agreed that it was impracticable to identify and allocate, from Bristol's accounting records, the specific costs associated with the various elements of its claim, we believe that it was incumbent on the contractor to provide its best estimates of those costs and on the Army to negotiate the settlement accordingly. In the case of the valuation of the

scrap modules, this apparently was done. We believe that it also should have been done on the costs projected for the 6,032 uncompleted units.

Bristol Electronics, Inc.

Bristol, in commenting on this portion of our draft report, stressed the inadequacies of the electrical test fixtures (gauges) and the Army gauge engineers' lack of technical ability and engineering talent. The Army's manner of negotiating Bristol's claim, i.e., the 19 months used for evaluation and the delay in paying the settlement, was also criticized.

In commenting on our statement that all producers of the radio set except Bristol had been required to meet the electrical interchangeability test requirement, Bristol stated that, from observations of one competitor's product, it knew for a fact that they (other producers) did not use gauges as desired by the Army.

Recommendation

We recommend that the Secretary of Defense take steps to discourage the settlement of claims based on total cost and require contractors to furnish documentary evidence showing the additional costs incurred because of the factors which form the basis of the contractors' claims.

## CHAPTER 5

### EVALUATION OF ADDITIONAL AWARD TO BRISTOL

#### ARMY'S BASIS FOR MAKING THE AWARD

Additional requirements for 4,373 AN/PRC-25 radio sets were established during fiscal year 1969. Due to the urgent requirement for the item, the Army's initial plan was to procure it from MEMCOR without competition; however, the Army decided that it had sufficient time to obtain competition. Bids were orally solicited from the three known sources capable of furnishing the required delivery. The award was made to the low bidder, Bristol, on July 18, 1969, at a unit price of about \$519. The other two bidders, RCA Corporation and LTV Electrosystems, Inc., MEMCOR Division, submitted offers of \$839 and \$686, respectively.

The requirement that electrical gauges be used to determine module interchangeability was waived for the bid solicited from Bristol but not for those solicited from the other two producers. Army officials advised us that the deletion of this requirement from the solicitations from other producers would have had only a nominal effect on their bid prices and that this requirement could have been deleted if it had been a deciding factor in making the award.

From our discussions with Army engineering personnel, it appears that meeting the test-gauge requirements involves costs for one-time refinements to the production process which do not recur. It appears also that the need for using the test gauges would be minimal once the two producers had an established production design which would meet interchangeability requirements. Apparently RCA Corporation and MEMCOR incurred these costs on earlier contracts. It appears further that, if the requirement was not needed, it should have been waived for all producers solicited. On the other hand, if the requirement was needed, it should not have been waived for any producers.

Prior to awarding the add-on order to the contract held by Bristol, the Army evaluated Bristol's capability to perform under the terms of the contract. The Army concluded

that Bristol possessed the necessary technical, productive, financial, and other resources to meet the required delivery schedule and to produce at the bid price. Bristol's performance under the prior contract was considered to be satisfactory.

Following are the matters considered by the Army in reaching its conclusions on some of the more critical evaluation points.

#### Past performance

In evaluating Bristol's past performance as satisfactory, the Army cited (1) the contractor's ability to meet its own delivery schedule of October 16, 1968, (2) the contracting officer's statement that past performance had been satisfactory, and (3) the fact that all the contractor's previous delinquencies had been excused through the negotiation of revised delivery schedules.

We believe that the fact that the completion date for this contract was delayed in excess of 2 years raises a question about the Army's findings that the contractor's past performance was satisfactory. The contractor has failed to meet any of the delivery schedules under the contract, including the original contract schedule and six revisions. Since Bristol was unable to meet the delivery schedule that it proposed under an October 16, 1968, revision, the Army was incorrect when it cited Bristol's ability to meet the requirements under this revision. Under these circumstances it does not seem reasonable to consider that the contractor's performance was satisfactory.

#### Production capability

The Army based its decision that Bristol could produce to meet the schedule delivery requirement on (1) a January 1968 Electronics Command industrial engineering study which concluded that Bristol possessed a production-line capability of about 825 units a month, assuming no production problems were encountered, and (2) past deliveries during certain months which equaled or exceeded the monthly add-on requirements of 630 units. The industrial engineering study showed, however, that, although Bristol possessed a theoretical

capacity of 950 units, its practical capacity at that point in time was about 450 units. The limiting factor was identified as the lack of production-line personnel. At the time the study was performed, the contract required peak monthly deliveries of 850 units.

Industrial engineering officials of the Electronics Command advised us that, in conjunction with the proposed add-on award, they had been requested to inform Government contracting officials of Bristol's maximum capabilities. In a memorandum dated June 27, 1969, they stated that there was no reason to believe that Bristol could sustain production at a level of over 500 units for future add-on awards. This conclusion was concurred in by Defense Contract Administration Services Region officials.

We found that, from the inception of basic contract DA-36-039-AMC-07306(E), Bristol had delivered 630 or more units a month on only two occasions.

#### Financial capability

Bristol experienced financial difficulties during the performance of basic contract -07306(E) which grew to the point where, 2 months prior to the add-on award, the administrative contracting officer reported that the contractor's financial position was precarious and that the contractor faced possible bankruptcy. Bristol's financial situation improved with the April 19, 1969, negotiated settlement of Bristol's claim before the Armed Services Board of Contract Appeals in the amount of \$1.4 million, of which \$754,000 was released to Bristol. Because of the reported demand by the contractor's bank for full repayment of its loan and because of demands by vendors for payment of past-due accounts, the contractor was still faced with an immediate cash shortage, even after the claim settlement. As a result of the contractor's projected cash shortage, the Army, on June 28, 1969, first evaluated Bristol as financially incapable of performing the add-on award.

Bristol developed a financial plan to improve its cash position by (1) extending its payout schedule to vendors and (2) placing a moratorium on the retirement of obligations due two affiliates. On the basis of the contractor's

presentation of an improved cash position, in a reevaluation dated July 10, 1969, the Army concluded that Bristol was financially capable of performing the add-on award.

We believe that the extension of the contractor's payout schedule to its vendors could be of questionable benefit to its performance under the add-on award. It is conceivable that, if vendors are not paid promptly, they may not supply materials needed for production. (See p. 45.)

#### Ability to produce at the award price

The Army concluded that Bristol could produce the AN/PRC-25 radio set at a unit price of \$519 on the basis of the following reasoning.

1. The original award at \$505 was ultimately increased to \$760, primarily as the result of technical problems and the negotiated claim settlement, neither of which should be experienced again.
2. The contractor had excess inventory with an estimated value of at least \$500,000, which had been procured in 1965 in anticipation of the Government's exercising options for increased quantities. Bristol claims to have discounted this inventory to the Government in pricing the current award.
3. A recent award had been made to Standard Winding Company, Division of Ovitron Corporation, for 7,079 units at a unit price of \$449.

Standard Winding obtained a line of credit of \$1.5 million with a corporate backer guaranteeing the loan, since the Army was apprehensive about awarding it a contract because of its low bid price.

We believe that serious doubt exists as to whether the add-on award should have been made to Bristol, in view of delays experienced with Bristol in the past coupled with its current production and financial uncertainties. Bristol was delinquent on the add-on quantity, and a letter from the administrative contracting officer requesting Bristol to show cause why the contract should not be terminated for default was issued in January 1970.

AGENCY AND CONTRACTOR COMMENTS  
AND GAO EVALUATION

Department of the Army

In making the second award, the Army said it had determined that Bristol was capable of fulfilling the necessary commitments on the basis of its improved performance and financial condition. Although the Army concurred in the finding that the gauge requirement was waived only for Bristol, it did not concur in our opinion that the requirement should have been waived for all suppliers. The Army also disagreed with the doubts that we expressed in our draft report concerning the advisability of awarding a second contract to Bristol.

The Army also stated that it was not aware of any development which would suggest that its finding of financial capability was improper.

Deletion of test-gauge requirement  
from Bristol solicitation

We believe that the Army has not satisfactorily responded to the question as to why some manufacturers were required to use gauges; although Bristol was permitted to omit the gauge test. Presumably, a requirement such as the gauge test is imposed to ensure that the items manufactured meet certain quality standards. If it was found to be unnecessary to meet such standards, the requirement should have been removed.

The limited impact that the imposition of the gauge requirement had on prices bid by Bristol's competitors--and the fact that the contracting officer could have deleted the requirement for the other bidders if it affected their chances of obtaining the contract--does not satisfactorily explain why the same conditions were not imposed on all bidders.

Propriety of second award to Bristol

The Army cited Bristol's delivery and production record during the period October 1968 through May 1969 as one of the factors considered in making the second award. This

record was believed to have demonstrated the contractor's ability to produce 540 to 630 units a month on a single-shift basis. Also, the Army expected that some multishift operation would be used to meet the delivery requirements. Following is a schedule of the contractor's deliveries for the period October 1968 through June 1969. (The month of June 1969 has been added because the second award was not made until July 18, 1969.)

	<u>Units delivered</u>
October 1968	182
November 1968	272
December 1968	352
January 1969	528
February 1969	616
March 1969 (note a)	-
April 1969	528
May 1969	620
June 1969	352

<sup>a</sup>Work stopped at plant due to financial difficulties.

Only in two 2-month periods had the contractor been able to sustain deliveries of 500 units or more a month, and in June 1969 these deliveries dropped to 352 units. We believe that this is further evidence that, at the time the second award was under consideration, the contractor's ability to deliver 500 units a month was questionable.

The contractor was delinquent on this second award and by February 28, 1970, had delivered only 902 units--or an average of 300 a month rather than the required 630 units a month--despite the Army's expectations of a multishift operation.

Bristol-manufactured radio sets had a rejection rate of about 10 percent at the Tobyhanna Army Depot, Tobyhanna, Pennsylvania, for the period July 1968 through June 1969. In March 1970, subsequent to a preaward survey of Bristol, a report was submitted by the Tobyhanna Army Depot which contained the following statements.

"1. During the life of the contract, this supplier has had a continuous history of delinquency and quality problems. Defects at Tobyhanna Army Depot have been found in excess of 25% at times. At no time would the contractor accept any responsibility for any deficiency after the set left his plant and so stated to DCASR [Defense Contract Administration Services Region] in writing."

Bristol Electronics, Inc.

Bristol, in commenting on our draft report, said that its technical delinquency was attributable to the unavailability of certain sole-source components. The example outlined was that, in December 1969, RCA Corporation failed to conform to specifications and was unable to deliver transistors to meet Bristol's needs.

We have been advised by RCA Corporation that, although it has no means of relating its transistor deliveries to Bristol with Bristol's AN/PRC-25 radio delivery schedule, the delays to which Bristol alluded were the result of credit holds invoked by RCA Corporation pending receipt of payment from Bristol to satisfy past-due accounts receivable. RCA Corporation has also stated that its records do not reflect any complaints relating to the quality of its products.

## CHAPTER 6

### SCOPE OF REVIEW

We reviewed the files at the Electronics Command pertaining to the preaward survey and award of contract DA-36-039-AMC-07306(E). We also discussed the contract award and modifications with responsible officials at the Electronics Command and at Bristol Electronics, Inc. In addition, we reviewed the files and discussed with officials at the Defense Contract Administration Services Region, Boston, Massachusetts, the preaward survey they made, as well as their recommendations to the Army. At the Boston Regional Office of the Small Business Administration, we reviewed such files as it made available to us relating to its survey of Bristol and its recommendations to the Small Business Administration headquarters in Washington. We also discussed the recommendations with responsible officials of the Boston Regional Office.

We discussed the award of the Certificate of Competency with officials at the Small Business Administration headquarters. We did not review all Small Business Administration files because we were denied access to certain information considered by that agency to be privileged. We also contacted present and former responsible officials of the Department of Defense in Washington, D.C., and at other locations.

EXHIBIT

LISTING OF PERSONS HAVING DIRECT  
FINANCIAL INTERESTS IN

BRISTOL ELECTRONICS, INC. (note a)

	<u>1965 to August 11, 1969</u>	<u>After August 11, 1969</u>
OFFICERS:		
President	Robert A. Pullman	Stanley A. Revzin
Vice President, Treasurer	Stanley A. Revzin	Stanley A. Revzin
Clerk	Helen Chagnon	David Barnett

Percent of voting stock  
or business owned

MAJOR STOCKHOLDERS:

Prior to August 11, 1969:

Robert A. Pullman 50

Stanley A. Revzin 50

After August 11, 1969:

Stanley A. Revzin 100

OTHERS:

Edward Gaffney

Has had an undisclosed financial investment from 1962 to date

<sup>a</sup>This information was confirmed and/or obtained through discussion with Mr. S. Revzin, President of Bristol Electronics, Inc.

**APPENDIXES**

H. R. GROSS  
3d DIST., IOWA

RAYBURN OFFICE BUILDING

COMMITTEES:  
FOREIGN AFFAIRS  
POST OFFICE AND CIVIL SERVICE

**Congress of the United States**  
**House of Representatives**  
Washington, D.C. 20515

HOME ADDRESS:  
WATERLOO, IOWA

COUNTIES:  
BLACK HAWK HAMILTON  
BRIMLEY HANCOCK  
BUTLER HARDIN  
CERRO GORDO HOWARD  
CHICKASAW MITCHELL  
FLOYD WINNEBAGO  
FRANKLIN WORTH  
GRUNDY 48 WRIGHT

February 19, 1968

Mr. Frank H. Weitzel  
Assistant Comptroller General of the United States  
General Accounting Office Building  
Washington, D. C.

Dear Mr. Weitzel:

I have been informed that the Small Business Administration, on June 28, 1965, issued a Certificate of Competency to Bristol Electronics, Inc., of New Bedford, Massachusetts, which enabled the firm to receive a Defense Department contract worth \$3,678,229.

It is further alleged that Bristol is currently in default on the contract and that it has received over \$2 million in progress payments.

The number of this case, I am told, is COC BOS 15.

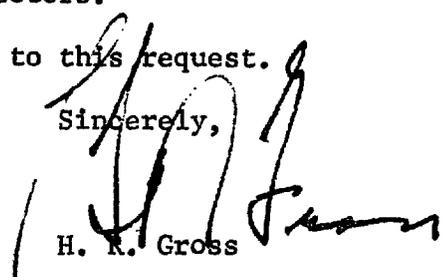
I am also informed that another firm, presumably a competitor, protested the award of the contract to Bristol, alleging Bristol couldn't perform it.

I would appreciate it if you would make a check to determine the facts in this case. If they prove to be true, was the Certificate of Competency issued after another Government Agency had made a determination that Bristol was incapable of performing?

Presuming the facts as outlined are substantially correct, I would appreciate as complete a listing as is possible of the persons having a financial interest in Bristol, and a list of its officers and directors.

Thank you for your attention to this request.

Sincerely,

  
H. R. Gross

HRG/dj

APPENDIX II

H. R. GROSS  
3d Dist., Iowa

HOUSE OFFICE BUILDING

COMMITTEES:  
FOREIGN AFFAIRS  
POST OFFICE AND CIVIL SERVICE

**Congress of the United States**  
**House of Representatives**  
Washington, D.C. 20515

HOME ADDRESS:  
WATERLOO, IOWA

COUNTIES:  
BLACK HAWK HAMILTON  
BREMER HANCOCK  
BUTLER HARDIN  
CENRO GORDO HOWARD  
CHUCKASAW MITCHELL  
FLOYD WINNEBAGO  
FRANKLIN WORTH  
GRUNDY

October 14, 1968

Mr. Elmer B. Staats  
Comptroller General of the United States  
General Accounting Office Building  
Washington, D. C.

Dear Mr. Staats:

In connection with my request for a review of the award of an Army contract to Bristol Electronics, Inc., of New Bedford, Massachusetts (your file B-156971); I would appreciate it if you would include information relating to the following:

1. After the Army had rejected Bristol on the grounds it had insufficient financing as well as additional deficiencies, the Washington Certificate of Competency Review Committee of the Small Business Administration came to the opposite conclusion, apparently on the basis of the same data used by the Army. What is SBA's explanation as to how this could happen? Who made this review for the SBA Committee? Who were the members of this Committee? Are minutes of its meeting available? If not, are minutes of such meetings normally made and are they normally available to your Office?
2. After the aware of the Certificate of Competency, the Army objected and a meeting with SBA was set up. It is my understanding that this meeting was cancelled, by telephone, by the Assistant Secretary of the Army, Installations and Logistics. If possible, would you determine on what basis this officer decided to cancel this meeting? Did anyone communicate with him concerning this contract just prior to his decision?

Thank you for your attention to this request.

Sincerely,

  
H. R. Gross

HRG/dj



UNITED STATES GENERAL ACCOUNTING OFFICE  
WASHINGTON, D.C. 20548

CIVIL DIVISION

OCT 24 1968

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Dear Mr. Randolph:

We have received a request from a member of Congress to review the circumstances under which the Small Business Administration issued Certificate of Competency No. BOS-15 indicating that Bristol Electronics, Inc., New Bedford, Massachusetts, was qualified to produce the small business set-aside portion of an Army procurement of AN/PRC-25 radios.

In order for us to perform an adequate review of this matter and be responsive to this request, we believe it will be necessary for us to review the entire record regarding the issuance of this Certificate of Competency. We therefore request that we be furnished the file on the issuance of Certificate of Competency No. BOS-15 to Bristol Electronics, Inc.

Sincerely yours,

Donald C. Pullen

Donald C. Pullen  
Assistant DirectorMr. Raymond F. Randolph  
Chief, Audits Division  
Small Business Administration



U.S. GOVERNMENT  
SMALL BUSINESS ADMINISTRATION  
WASHINGTON, D.C. 20416

October 29, 1968

Mr. Donald C. Pullen  
Assistant Director, Civil Division  
United States General Accounting Office  
Washington, D. C. 20548

Dear Mr. Pullen:

We have received your letter of October 24, 1968, in which you requested that your office be furnished the entire file on the Certificate of Competency No. BOS-15, Bristol Electronics, Inc., New Bedford, Massachusetts,

Since much of the information contained in the file is deemed to be business information within the scope of 18 USC 1905, the Small Business Administration is unable to furnish the file to your office without an assurance of adherence to the confidentiality requirements of this statute. Upon receipt of such assurance, we will submit the file to your office. We would be willing to confer with you to determine whether the specific items which your office desires to make public are properly classified as confidential and, therefore, subject to 18 USC 1905.

Sincerely,

  
Raymond F. Randolph  
Chief, Audits Division

BEST DOCUMENT AVAILABLE



UNITED STATES GENERAL ACCOUNTING OFFICE  
WASHINGTON, D.C. 20548

CIVIL DIVISION

NOV 7 1968

BEST DOCUMENT AVAILABLE

Dear Mr. Randolph:

By letter of October 24, 1968, we requested that you furnish us the file on issuance of Certificate of Competency No. BOS-15 to Bristol Electronics, Inc., in order that we might review it in connection with responding to a request for information on the matter made of us by a member of Congress.

Your letter of October 29 states that:

"Since much of the information contained in the file is deemed to be business information within the scope of 18 USC 1905, the Small Business Administration is unable to furnish the file to your office without an assurance of adherence to the confidentiality requirements of this statute. Upon receipt of such assurance, we will submit the file to your office. We would be willing to confer with you to determine whether the specific items which your office desires to make public are properly classified as confidential and, therefore, subject to 18 USC 1905."

It is our view, separate and apart from the fact that our request for your file has originated because of the interest of an individual member of the Congress, that under the provisions of law codified at section 54 of title 31, United States Code, we have a statutory right of access and you have a corresponding statutory duty with respect to providing us the data we have requested. Therefore, there would not appear to be any cause for concern on your part that turning the file over to us would constitute a violation by you of the provisions of section 1905.

Moreover, we are of the view, in light of our responsibilities to the Congress, that our reporting of information to members of the Congress does not constitute a violation of section 1905, though the information involved be such as would give rise to a violation of that section if reported elsewhere. In line with this view, we intend to report to the Congressman interested in the Bristol case information which we have received from your Boston Regional Office and which may in some measure duplicate information contained in the file we have requested of you. In making such report we would indicate the relevance of section 1905 to the information contained therein.

On the basis of the above understanding, we again request the cited file; and we do assure you, as indeed we must, being ourselves bound by the provisions of section 1905, that we intend to adhere to the confidentiality requirements the section imposes.

If you should refuse to furnish us the file, we feel we have no alternative but to advise the Congressman involved that our request for the information we seek has been denied and that we, therefore, cannot be fully responsive to his request.

Sincerely yours,

Theodore J. Becker

for/ Donald C. Pullen  
Assistant Director

Mr. Raymond F. Randolph  
Chief, Audits Division  
Small Business Administration

BEST DOCUMENT AVAILABLE



U.S. GOVERNMENT  
SMALL BUSINESS ADMINISTRATION  
WASHINGTON, D.C. 20416

NOV 19 1968

BEST DOCUMENT AVAILABLE

Mr. Donald C. Pullen  
Assistant Director, Civil Division  
United States General Accounting Office  
Washington, D. C. 20548

Dear Mr. Pullen:

This is in reply to your letter of November 7, 1968, in which you again requested that your office be furnished the file on the Certificate of Competency, No. BOS-15, Bristol Electronics, Inc., New Bedford, Massachusetts.

Since your office has not given the assurance, as requested by our letter of October 29, 1968, concerning your adherence to the confidentiality requirements of 18 USC 1905, we are unable to furnish the file to your office. However, if you could furnish us with specific questions or identify specific information which you need, we would be pleased to respond, as best we can, within the limitations of the above cited law.

With regard to the information that your office obtained from our Boston office, SBA does not authorize its release to an individual congressman without first being allowed to determine which, if any, of such information is confidential and may not be released to the congressman.

Sincerely,

  
Raymond F. Randolph  
Chief, Audits Division



UNITED STATES GENERAL ACCOUNTING OFFICE  
WASHINGTON, D.C. 20548

CIVIL DIVISION

NOV 29 1968

Dear Mr. Randolph:

Reference is made to your letter of November 19, 1968, regarding the furnishing to the General Accounting Office of the file on the Certificate of Competency No. BOS-15, Bristol Electronics, Inc., New Bedford, Massachusetts. You stated that you were unable to furnish the requested file; however, you would respond, as best you could, to specific questions.

Accordingly, would you please furnish this office with the answers to the following questions.

1. After the Army had rejected Bristol's bid on the grounds that it had insufficient financing as well as additional deficiencies, the Washington Certificate of Competency Review Committee of the Small Business Administration came to the opposite conclusion, apparently on the basis of the same data used by the Army. What are SBA's reasons and rationale for overcoming the findings and conclusions of the Army?
2. Who made this review for the SBA COC Committee?
3. Who were the members of this Committee?
4. Are minutes of such meetings made? If so, please furnish a copy of the minutes of this Committee meeting.

Sincerely yours,

*Donald C. Pullen*  
Donald C. Pullen  
Assistant Director

Mr. Raymond F. Randolph  
Chief, Audits Division  
Small Business Administration



U.S. GOVERNMENT  
SMALL BUSINESS ADMINISTRATION  
WASHINGTON, D.C. 20416

December 31, 1968

Mr. Donald C. Pullen  
Assistant Director, Civil Division  
United States General Accounting Office  
Washington, D. C. 20548

Dear Mr. Pullen:

This is in reply to your letter of November 29, 1968, in which you requested SBA to answer certain questions related to the Certificate of Competency No. BOS-15, Bristol Electronics, Inc., New Bedford, Massachusetts.

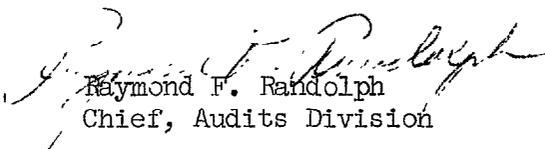
Your letter inquires as to ". . . SBA's reasons and rationale for overcoming the findings and conclusions of the Army?" Our action was based on the following:

1. The company had a satisfactory record of completion of contracts obtained previously through the issuance of SBA COC's.
2. The company's productive facilities were adequate for producing the equipment required in accordance with the terms of the contract under consideration, and were readily available for that purpose.
3. An adequate staff, including labor, technical and professional manpower was available to Bristol.
4. The necessary materials, supplies, and sub-contracted components and services were available as needed by Bristol.
5. Bristol's management was experienced and capable of meeting all management requirements imposed by the contract.
6. Financing in the amount needed to perform a contract resulting from the above referenced IFB would be made available pursuant to a signed commitment by a bank that had previously acted in the same capacity for Bristol.

7. The Comptroller General has consistently held that a bidder may be determined to be capable of performing if he has the ability to obtain the necessary equipment, facilities, technical skills, and financial resources. Sec 42 Comp Gen 532 wherein the Comptroller General said "A bidder who may not have the equipment and personnel but who may have the . . . wherewithal to obtain them could be considered to be capable of performing."

The information requested regarding questions 2, 3 and 4 of your letter pertains to internal administrative procedures and communications which we consider privileged.

Sincerely,

  
Raymond F. Randolph  
Chief, Audits Division

BEST DOCUMENT AVAILABLE

*Bristol Electronics, Inc.*

MANUFACTURERS OF  
ELECTRONIC COMMUNICATION & TEST EQUIPMENT

MANUFACTURING PLANT  
AND GENERAL OFFICES

651 - 657 ORCHARD STREET  
NEW BEDFORD, MASS. 02744  
TEL. AREA CODE 617 997-3181

19 May 1970

Mr. James H. Hammond  
United States General Accounting Office  
Washington, DC 20548

**BEST DOCUMENT AVAILABLE**

Dear Mr. Hammond

Reference is made to your draft, file number PP-279 entitled "Review of the Procurement of AN/PRC-25 Radio Sets from Bristol Electronics, Inc., New Bedford, Mass." submitted to us in advance of publication.

Our company cannot accept the report, or the conclusions contained therein. We find that the report contains inaccurate facts, probably given as such to the GAO investigators, and certain serious omissions of facts, that if included, would have changed the conclusions. The ensuing critique will supply details to corroborate this statement. It will show that the original evaluation of Bristol Electronics, Inc., was performed in a more detailed and professional manner by the Small Business Administration but the ECOM's personnel team was brief, cursory and predetermined. As the president of a small business, I am in a position to appreciate the efforts of SBA in the very thorough analysis of a company before deciding on the merits of the application for a Certificate of Competency. I will make particular emphasis on the gage problem whose design was proven technically deficient by actual tests at our plant by Government personnel. I will also stress the fact that once the Government changes the delivery schedule by means of a bilateral contract modification, the original schedule is no longer a means of measurement of contractor performance.

The Digest of page 1 makes reference to the fact that our company became delinquent almost immediately and cites a comparison between the original contract delivery date and the actual deliveries as of 31 October 1969. As this is a digest of the complete report, I will offer my comments, in detail, by referring to later pages in the report. I will indicate the unfairness in referencing the original contract delivery date in view of the impact of the mandatory changes imposed by the Government.

## APPENDIX IX

### Page 2

Page 7 briefly describes Radio Set AN/PRC-25 and refers to the RT-505 as being similar to the AN/PRC-25. In actuality, Radio Set AN/PRC-25 is a system of various components consisting of the RT-505 and accessories necessary for operation and transportation.

Page 15 of the draft indicates an analysis of the supposed contrary evaluation made by the Army and SBA. In reflecting back to the evaluation period, it is recollected that the technical survey team of the Army consisted of two people from Fort Monmouth, neither of whom earned an Electrical Engineering Degree in an accredited technical university or college. In all, the men spent about 4 hours including a one-hour lunch period, in performance of their evaluation of our company. At that time, Bristol had two Electrical Engineers and one Industrial Engineer in charge of production. The latter was not interviewed so that it was not possible for the survey team to determine our production plans. It is important to realize that the contract allowed 19 months to produce the first unit which was ample time to formulate production plans. Of the Engineers, the survey team asked only one question of myself, as an engineer, and did not question the others. This question was not of a technical nature. As to the equipment in our incoming inspection department, it can be stated that it was in full compliance with Specification MIL-I-45208 as required by the past contracts. I do not believe it necessary for a plant to have all types of equipment available if it is not in use, especially prior to award. With a 19-month production lead time, equipment can be purchased or designed and fabricated as the time approaches for production. The Army also made a very sketchy review of our available finances by making a desk review in Philadelphia without talking to Bristol's management. For a contract of this magnitude and importance to both parties, detailed questions and facts should have been generated. As to lack of experience, Bristol's management produced for another firm much more sophisticated electronic hardware of greater complexity and volume.

Of great importance is the analysis shown on page 15 under paragraph 1. It pertains to prior performance. The three contracts cited were awarded at different times and were for similar and in part, identical items. The Government, under the changes article, instituted a directed, mandatory change that required a new design of the aluminum die casting. Since all contracts and items were affected, the change had the effect of grouping the three contracts as one. These items were for use on the AN/VRC-12 Program, a vital communications radio system for use on Army vehicles and tanks. As Bristol was the sole supplier, the Military Contracting Officer personally directed production and delivery of the various items of the three contracts so as to meet his supply need, thereby causing certain acceptable delinquencies. As a result, our original production plan had to be abandoned. The Government was well aware of this situation and never officially criticized performance. As a matter of fact, upon completion of these contracts, Bristol was accorded "verbal commendation" by the chief of ECOM's Procurement Division. Bristol's performance of delivery had saved the AN/VRC-12 Program, which was a vital radio communications system used in military combat vehicles and we were the sole supplier of these units.

We now see that a distortion of the true facts of performance resulted in a denial of a contract for Radio Set AN/PRC-25 because of an erroneous evaluation by civilian personnel. The following table delineates these three contracts in their entirety which displays the over-all delivery situation.

CONTRACT ORDER NO	ITEM	QTY	ACTUAL DELIVERY COMPARED TO CONTRACT REQUIREMENTS	CITATION ON PAGE 15 OF DRAFT
04396(E)	C-2297	2983	Complete 007 Days Ahead	80 Days Delinquent
05104-PP-64	C-2298	8742	Complete 017 Days Delinquent	30 Days Delinquent
	C-2742	2118	Complete 134 Days Ahead	-----
	C-2299	1012	Complete 098 Days Ahead	-----
01880(E)	C-2297	2294	Complete 073 Days Delinquent	90 Days Delinquent
15426-PP-63	C-2742	2262	Complete 016 Days Delinquent	-----
02952(E)	C-2298	6814	Complete 006 Days Ahead	Delinquent
15448-PP-63				

Note that in all cases, the number of days delinquent cited in the draft are erroneous. In particular, the 80 days delinquency was actually completed 7 days ahead of schedule. Please also note the ECOM omitted any citation of those items, within the same contract, as being completed ahead of schedule. Bristol submits while this record is not perfect, it certainly does not warrant a turndown on the basis of delinquency. It is entirely inconsistent with our record of high quality, words of praise given Bristol, and the circumstances surrounding the changes initiated on the three contracts.

As a further reference to inconsistency, one year after receiving the AN/PRC-25 contract, the Government had a critical shortage of spare parts for the radio for combat needs. They required 61,200 modules of eighteen types to be delivered with a starting date of 30 days. No other company could meet this requirement except Bristol. Bristol delivered all modules in a period of three months to four days ahead of the contract schedule. This is certainly not the record of a delinquent contractor.

In due course, Contract 07306(E) was awarded after the review performed by SBA whose regional office spent three very full days at Bristol. At that time, an analysis was made of material parts quotations as to price and delivery. The SBA, through previous contacts with Bristol, was well aware of our qualified technical and production ability. They assured themselves that adequate financing was available through our own funds, progress payments, and a letter from our bank expressing financial support. They determined that our finances permitted the purchase of necessary materials and test equipment. After the

regional review, the SBA Washington Office reviewed all the facts and were very much detailed in questioning our financial and technical ability. It was only then that they decided to issue the COC. This clearly indicates the contrast in evaluating Bristol Electronics' capability. The SBA asked detailed information and thoroughly evaluated our technical ability, financial resources, and plant facilities. The Army's civilian personnel review was cursory and as evidenced by the facts, preconceived prior to evaluation. Military supply purchases are a serious matter and all bidders should be given equal opportunity under the law to prove their ability. Those put in a position of trust should themselves have the proper experience and ability to judge others. It can be seen, from subsequent events, that the SBA's decision to grant the COC was proven correct, for the Army awarded Bristol an additional quantity without rejecting Bristol. In view of the true facts concerning Bristol's record on all previous contracts performed in the six years prior to the turn-down, Bristol should not have been put in the position of requiring a SBA COC in the AN/PRC-25 contract.

I believe it is appropriate to comment on the statements contained on page 19 concerning delivery. Although it is true that the contract was originally scheduled for completion by September 1967, the various events that transpired during that period more than adequately account for the time. When the Government directs changes under the terms of the "changes" article contained in every Government contract, time and funds must be adjusted accordingly. In most instances, the changes have a very decided impact on delivery and it is no longer reasonable to make references to the original contract delivery schedule. The Government recognizes this by eventually negotiating and issuing a contract modification that incorporates costs for the change and a new delivery schedule. It is interesting to note that these negotiations and the subsequent contract modifications are not done in a timely fashion so that many months will elapse while a contractor may appear to be in technical default. In the instant case, the Government directed major changes without advance notice which had a very serious impact on our ability to obtain material and effectively destroyed our entire production plan and cash flow projections. As a typical example, a directive, designated as FEB-7, was issued by the Contracting Officer's technical advisors on 22 June 1966. The document was forwarded to the Contracting Officer on that date. He, in turn, did not order its implementation until 9 September 1966. During this period, Bristol Electronics, Inc. submitted its preproduction samples for approval. The directive required Bristol to alter the hardened steel dies used in casting the aluminum front panel. This change required an overhaul of the dies, which is time consuming. The record then shows that the directed alteration was in error and some months later we were directed to again alter the dies to the original condition. The record indicates the tremendous impact on our production and the subsequent roll-back in the delivery schedule. There were other mandatory changes that had an unexpected impact on production. In hindsight, it would appear that the drawings given to Bristol as the sole means of construction were not in a condition to be used for bid purposes.

BEST DOCUMENT AVAILABLE

It is now appropriate to comment on the electrical test fixtures, also referred to as gages. In October 1967, Bristol reported its observations concerning the suitability of the electrical gages. We first noted that, as a whole, they were not suitable for their intended use as in most instances they would reject modules from otherwise acceptable radios. Secondly, two of the gages were ruled defective by DCASR QARIC. As a result of Bristol's request of October 1967, a meeting was held at Fort Monmouth on 15 November 1967 at which time Bristol requested Military command to send a qualified impartial group to Bristol to verify Bristol's contention that the electrical gages were deficient or not. The military agreed to this request and on 17 November 1967 a team of sixteen Government personnel under the command of LTC Newton visited the plant. After an exhaustive and very thorough test, it was determined that the gages were faulty and the decision was made to return all gages to Fort Monmouth for repair and calibration and were to be returned within a week. The gages were not returned until the following year and the DCASR QARIC was instructed not to implement the electrical gages until notified to do so. The record shows that they were never again accepted by the Government for use on our contract. The comment that they were not returned so as not to give Bristol an excuse for delays is obviously beyond a tongue-in-cheek remark. It is a distortion of the facts as determined by other Government personnel and indicative of the incompetence of the Army's civilian personnel gage engineers. These same engineers were never able to demonstrate the suitability of the gages for determining interchangeability. At one particular meeting at our plant where three Government attorneys, four or five Government engineers, and two contracting officers were present, four randomly selected Memcor radios, requisitioned from Sacramento Army Depot, were tested on the gages. The Memcor radios met all specifications, but the modules failed the electrical gage requirements. It was determined, however, that Bristol Electronics had true interchangeability of all modules. Based on these findings, and other tests and observations, the Government elected to negotiate our claim. Almost 19 months were consumed for this evaluation during which time Bristol was driven to the brink of bankruptcy. Our banks refused to extend credit beyond the \$600,000.00 limit due to the delay of Government settlement and all progress payments were exhausted. Prior to this, we had credit of over a million dollars with the bank. Only our management skill kept the company in operation. It is also interesting to note that Fort Monmouth never corrected the gage specifications and has passed this problem on to another contractor. I repeat that the Government's gage personnel never proved or demonstrated the suitability of the gages, but offered voluminous verbal criticism.

After final settlement of the claim for \$1.4 million, two additional months elapsed before the funds were dispersed. Of this amount, Bristol received in one payment about \$300,000.00. Our trade payables alone were over \$500,000.00 and were aged as much as six months. Bristol was not satisfied with the Government's offer of settlement, but it had to be accepted, or terminate operations of the company. Surely it can be seen that this impact, and the yet to come ripple effect, destroyed any semblance of production planning for a period of time. Never once did our quality fall down and we continue to enjoy the knowledge that we alone had the highest quality of all manufacturers. From my observations of one competitor's product, I know for a fact that they do not use gages as desired

## APPENDIX IX

### Page 6

by the Army. We are privy to the knowledge that the defective gages Bristol received were those rejected by Memcor and never repaired by the Government. These defective gages were given to us as a means of acceptance of our product. The record clearly shows the damage caused by this action of Fort Monmouth's gage engineering personnel.

For the reasons previously cited, I must ask for a correction of the last sentence on page 23. The Government, through its various contract modifications admitted that its actions caused delays. As previously noted, it is not a fair statement to cite the original contract delivery date when the Government ordered changes that could not be performed in the original period. Bristol's statement about the lack of lead time is correct. After the impact of FEB-7 which proved to be ill-conceived, Bristol was forced to produce radios in the same month that delivery was required, leaving no room to overcome normally expected vendor defaults or material transportation problems.

In reference to the imposed condition of Mandatory A inspection cited on page 25, I believe it necessary to supplement the statements cited. The reference to "Statistical Sampling Inspection" is not unique to this contract but is inherent in all Government contracts in the same or similar form. In the instant case, a formally advertised bid was offered by the Government. In formulating our price, it is incumbent on all bidders to draw upon their experience on previous contracts. Our plant is approved and always operated under Specification MIL-I-45208 governing inspection systems. We know the extent of normal Government inspection is to insure compliance with MIL-I-45208 and apply the principles of MIL-STD-105. If then deemed necessary, additional inspection by the Government is imposed. This occurs if the contractor's quality is below normal. With the lack of any special citations in the bid papers, we could reasonably assume that the proposed contract would be conducted in a similar fashion. However, almost immediately after award, at a post-award conference at our plant, we were verbally informed that the Government would impose the so-called Mandatory A requirements on the Government's Quality Control personnel. If this was known to be a requirement so soon after award, why was it not cited in the bid set? The ASPR specifically forbids sharp buying practices of Government personnel. After the announcement, the Government could have required Bristol to furnish hundreds of thousands of dollars of test equipment and literally thousands of square feet of test area. It was for this reason that we believed that a change in scope was set forth at the post-award conference and Bristol requested additional compensation. It is our opinion that Bristol would have persevered at a formal hearing before the ASBCA.

I have previously discussed the matter of electrical gages. Bristol proved that its engineering approach to the matter of interchangeability was sound and if adopted by the Government, would result in 100% interchangeability of modules, regardless of the source of manufacture. A radio operator in combat conditions could replace a defective module, merely by plugging it in with no additional alignment and then have a radio meeting full specification requirements. The

Government's own gage engineers, including the very man responsible for their acceptance, witnessed this demonstration but refused to accept the results. The Government still retains gages that accept defective modules, also demonstrated, and have electrical parameters that have, in most part, no bearing to the actual functioning of the module in the radio. An exact parallel to this situation is to attempt to measure a yardstick with a meterstick. This is not possible as two distinct systems of measurement are involved. Our contention concerning the unsuitability of the design of the gages can be corroborated by the radio design engineer at Fort Monmouth's engineering laboratory. There are in existence, technical documents that show that Bristol constructed special modules, with known defects, and demonstrated that the gages would accept these defective modules as spare parts. The Government's reply to this incongruous situation was that we should be more careful. This is a clear disregard of the technical problem and showed a disinterest on the part of the gage engineers to assure proper equipment for our combat forces.

On page 27, the report states that Army personnel still maintain that the radio is too sophisticated for Bristol to produce. Our defense, if one is necessary, is to indicate that we successfully delivered over 10,000 radios. I submit that the Army's gage engineers lack the technical ability and engineering talent and as a result, millions of dollars have been spent for spare parts with absolutely no concrete assurance that the spare parts will properly function in the field. In fine, he established gage design and limits that are erroneous, and could never defend his contention by actual demonstration to either Bristol's or the Army's legal personnel. To this very day, Bristol delivers two types of modules. For the spare parts contracts we have, we submit for acceptance, modules that pass the electrical gages. For the radio contract, we submit modules that result in perfect radio performance and do not necessarily pass the Government gages.

In line with the preceeding statements, I should like to refer to page 29 of the draft. It is stated therein that the Army's trial attorney asked the gage engineer for evidence to refute Bristol's contention. Apparently, he stated that this request was unreasonable. Why did the engineer consider it unreasonable to prove his many statements? Surely, if the other manufacturers had, in fact, used electrical gages without difficulty, a wealth of documentary evidence was available for presentation to the trial attorney. Surely, that statement to the trial attorney was entirely, in itself, untrue, for if it caused the Army to pay over \$1 million, he should have refuted our contention with something other than idle words. Yes, the drawings indicate that certain modules are tunable, but that is not the point in question. The gages, as acceptance devices, should accept modules from acceptable radios. That is the function of a gage. Anything short of that proves the unworthiness of the gage design. In addition, he never proved our lack of production know-how. It is these unsubstantiated, unprofessional types of verbal statements that cause our Government to spend millions in wasted dollars.

Page 30, second paragraph, again states the gage engineer's position that the gages are a compromise with cost. The AN/PRC-25 Program represents an investment by the Government in hundreds of millions of dollars. How is it possible that he compromised in cost when lives and millions of dollars are at stake? The spare part units should function without adjustment, for during combat, tools and time may not be available. The radio is a vital part of our military operation and costs should not be a controlling factor where lives are at stake. I suggest his cost consciousness is a hindsight reflection to cloud an erroneous gage design of his own doing. I emphatically refute his statements concerning elimination of the gages to preclude our request for delays, as the gages were removed, never to be reinstated in production as other Government personnel at DCASR never accepted their use.

On page 35, concerning the most recent award to Bristol, the gage requirement again is cited. It is again appropriate to mention that an independent government test performed on four Memcor radios refute the fact that Memcor's modules pass the gage requirements. The fact that their radio price is much higher than Bristol's could be a logical conclusion that they retune the modules, but absorb the cost.

I have, in the preceding discussion, written about the draft's constant reference to a two-year delinquency. I believe, in the light of this discussion, this statement should be revised.

Page 37 makes reference to an Industrial Engineering survey of our capability. I have no knowledge of any Government Industrial Engineer visiting our plant. However, in view of our monthly deliveries on the add-on contract, his observations and findings are questionable.

Page 39 cites our technical delinquency to the add-on quantity. The facts show that this delinquency was attributable to the unavailability of certain sole source components. In one particular case in December 1969, our supplier of a sole source transistor failed to conform to QPL specifications and military specifications and could not deliver transistors to meet our needs. Due to help given to Memcor by Bristol to enable them to meet their delivery requirements by supplying initial components during the period 1967-1968, in order that Memcor could deliver their much needed AN/PRC-25 Radio Set to the combat forces in South Vietnam (See Exhibit 1) Bristol, in its persistence to meet the schedule, sought and received in November 1969, the loan of 1,000 RCA 2N1493 transistors from Memcor. The DCASR QAR, Mr. Brown, would not permit the use of these transistors from Memcor until Bristol received certification from Memcor that these transistors were not scrap and met the Government specifications. This was accomplished in December 1969 and Bristol put them immediately into production thereby reducing the delay that would have occurred due to the failure of RCA to meet its QPL requirements. Due to loss of lead time caused by failure of RCA sole Government source transistors and other Government imposed requirements, Bristol, with tenacity and perseverance, with the use of Memcor's supply of RCA's sole source transistors went into production and delivered PRC-25 in January 1970. By the end of February, Bristol had overcome the loss of necessary lead time. During March 1970, Bristol produced and delivered 800 radios and in April, 702 radios. In the first 15 days of May, we have submitted to the Government, five lots (450 radios) and anticipate the production of a minimum of 450 more radios by the end of the month. We shall endeavor to complete the add-on contract by the end of June despite the various

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sole source items and without receiving a justified roll-back schedule. A casual examination of the above production will show that Bristol's planned production of this add-on quantity would have been met, as was Bristol's intention, from a month to six weeks ahead of contractual schedule. In the entire history of the AN/PRC-25 Program, a vital component of our military effort, no attempt was made by the Government to specify a substitute component or to establish alternate sources through preparedness contracts. In case of a national emergency, the need for this radio would increase, but production by any company would be limited and hindered by these sole source items. Bristol's engineering group, on its own, studied one component, and is in the process of evaluating a new type of transistor that could be used interchangeably with the present one.

Exhibit A should be corrected to reflect that Mr. Gaffney has had a financial investment since 1962 and not 1965.

Exhibit B is the Comptroller's answer to a protest by Model Engineering and Manufacturing Corporation, now known as Memcor. A recent Senate hearing, given wide publicity in The Wall Street Journal, brought out the fact that at the time Memcor protested our award, they themselves were experiencing technical and financial problems. Our engineering group is much smaller than Memcor's but we solved all the technical problems without outside assistance and did not have extraordinary relief.

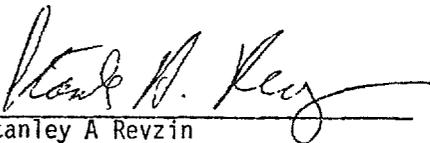
I should like to conclude my comments by stating my thoughts, as the president of a small business, concerning The Small Business Administration. The fact that Bristol has remained in business as a prime manufacturer is attributable, in many respects, to the SBA. We have found the SBA to be very thorough and comprehensive during the period of evaluating an application for a Certificate of Competency.

Years ago, there were denials of our application as well as acceptances. Upon receipt of the contract, they have always continued to render assistance in many forms. They have organized meetings so that Bristol and the Contracting Agency could mitigate its problems. They have offered contractual guidance, suggested new suppliers for various components, and helped expedite distant delinquent suppliers by contracting other regional SBA offices. They are truly concerned about small businesses and have proven to be an effective organization that has carried out the mandate of Congress.

May I request, Mr. Hammond, that we arrange a meeting between yourself and Bristol after you have reviewed our comments? I believe we can document all the statements contained herein. Thank you for the opportunity to review the draft.

Very truly yours

BRISTOL ELECTRONICS, INC.



Stanley A Revzin  
President

SAR/dcl

EXHIBIT 1

PARTIAL RECORD OF MATERIAL LOANED TO MEMCOR BY BRISTOL TO ENABLE MEMCOR TO  
MEET THEIR SCHEDULE

<u>DATE</u>	<u>DESCRIPTION</u>	<u>PART NO</u>	<u>QUANTITY</u>	<u>NORMAL LEAD TIME</u>
3/8/67	Tip Jack	447671-3	1000 ea	8 weeks
7/15/67	Housing Assy	447219	1000 ea	5 months
10/27/68	Antenna Assy	447102	1000 ea	5 months
10/67	Coils		1000 ea	4 months
11/67	Coils		1000 ea	4 months
6/26/68	Antenna	AT/892	1000 ea	3 months
5/24/68	PR Brd (kdoor)	447735	1000 ea	3 months
9/68	Hinge	447121-1	1000 ea	4 months



U.S. GOVERNMENT  
SMALL BUSINESS ADMINISTRATION  
WASHINGTON, D.C. 20416

OFFICE OF THE ADMINISTRATOR

JUN 5 1970

Mr. Henry Eschwege  
Associate Director  
United States General Accounting Office  
Washington, D. C. 20548

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Dear Mr. Eschwege:

Your letter of April 21, 1970, requested our review and comments on a draft of your proposed report regarding the procurement of AN/PRC-25 radio sets by the Department of the Army from Bristol Electronics, Inc. (Bristol), New Bedford, Massachusetts.

The information contained in the draft report, insofar as it pertains to the Small Business Administration, is substantially the same as that contained in our files. On July 28, 1965, SBA certified to the contracting officer that Bristol was competent, as to capacity and credit, to perform the proposed procurement. As indicated on page 11 and in Exhibit B of the draft report, your office reviewed our file and issued Decision No. B-156971, August 23, 1965, denying a protest against the issuance of the Certificate of Competency (COC) in this case. The decision further held, consistent with prior decisions, that the issuance by SBA of a COC is conclusive on the contracting officer with respect to a small business bidder's capacity and credit to perform a specific Government contract. Your subsequent decisions have upheld this rule. In Decision No. B-167654, dated January 19, 1970, you stated:

"Should SBA issue a Certificate of Competency (COC) to a concern, the contracting officer must accept the COC as conclusive of that concern's capacity, regardless of his views or those of any other activity, on the matter. 38 Comp. Gen. 864 (1959); 37 Comp. Gen. 798 (1958)."

Our decision to issue a COC in this case was based upon a thorough investigation and evaluation of all facts available to us bearing on Bristol's capacity and credit. Our judgment in issuing a COC to Bristol in this case appears to have been corroborated by the following subsequent events:

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- (a) Substantial performance of the contract by Bristol (draft report, page 23).
- (b) Excusable delays by Bristol in the performance of the contract culminating in settlement by the Army of Bristol's claim for additional costs incurred by reason thereof, in the amount of \$1.4 million, in April 1969 (draft report, page 33).
- (c) Award by the Army of a new contract in July 1969 to Bristol for an additional 4,373 radios without referral to SBA (draft report, page 11).

Thank you for the opportunity afforded us of reviewing the draft report and submitting our comments.

Sincerely,



Hilary Sandoval, Jr.  
Administrator

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HEADQUARTERS  
DEPARTMENT OF THE ARMY  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C.

22 JUN 1970

Mr. C.M. Bailey  
Director, Defense Division  
US General Accounting Office  
Washington, D.C. 20548

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Dear Mr. Bailey:

This is in response to your letter of 21 April 1970, to the Secretary of Defense requesting comments on your draft report titled "Review of the Procurement of AN/PRC-25 Radio Sets From Bristol Electronics, Inc., New Bedford, Massachusetts" (OSD Case 3111).

The Department of the Army position with respect to the report is inclosed. This reply is made on behalf of the Department of Defense.

Sincerely yours,

A handwritten signature in cursive script that reads "Vincent M. Ellis".

VINCENT M. ELLIS  
Brigadier General, USA  
Deputy for Procurement

1 Incl  
Army  
Position Statement

DEPARTMENT OF THE ARMY POSITION  
ON

GAO (DRAFT) REPORT GAO PP-273, DATED APRIL 1970

REVIEW OF THE PROCUREMENT OF AN/PRC-25 RADIO SETS FROM BRISTOL ELECTRONICS,  
INC., NEW BEDFORD, MASSACHUSETTS

(OSD CASE #3111)

I. POSITION SUMMARIES.

A. GAO Position Summary.

In discussing the first award to Bristol, GAO contends that Bristol did not have the production capacity or the financial capability to insure proper performance on the contract. Despite the Army's initial rejection of the Bristol bid as nonresponsible, the Small Business Administration issued a certificate of competency without further formal objections from the Army. GAO believes that the settlement of the Bristol claim at \$1.4 million was questionable as the government negotiators could not establish a relationship between the amounts claimed and the actual costs incurred for the matters in dispute. The Army should not have awarded Bristol an additional quantity of 4,373 radio sets because of Bristol's poor performance in the past and uncertain financial position. On the new contract, the Army should not have waived test gauge requirements for the proposal solicited from Bristol while still requiring it for the other two producers.

B. Army Position Summary.

The Army concurs with the GAO findings. The Army nonconcurs with the GAO conclusions. The rationale for the nonconcurrences is explained in paragraph IV below.

II. BACKGROUND FOR ARMY POSITION.

In this, as in all award situations, selection of the contractor is a complex process involving the judicious evaluation of many factors. This selection included consideration of the Small Business Program as well as the need to be supply responsive. The Army deferred to the SBA judgment that Bristol could perform satisfactorily on the award, as a responsible contractor within the meaning of the regulations.

For the second (add-on) award, the Army's judgment was based on Bristol's improved performance and financial condition. The second award is likewise illustrative of the principle that each award must be decided on its own merits, with due consideration to the circumstances at the time of award.

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INC., NEW BEDFORD, MASSACHUSETTS

Procurement officials can only be expected to use their best judgment based upon the circumstances of each case at the time the award decision is made.

III. ARMY POSITION ON GAO FINDINGS.

The Army concurs with the findings that: (i) it discontinued its efforts to get the Small Business Administration to withdraw Bristol's Certificate of Competency; (ii) the adverse factors cited in the Army's preaward survey could have contributed to Bristol's performance difficulties; (iii) Bristol's claim was settled by mutual agreement without establishing a relationship between the amounts claimed and the alleged causes thereof; (iv) it waived the gauge requirement only for Bristol; and (v) it determined that Bristol was capable of fulfilling its commitments under the second award.

IV. ARMY POSITION ON GAO CONCLUSIONS.

The Army nonconcurrs with the GAO conclusions that: (i) the settlement of the Bristol claim was not proper; (ii) if the test gauge requirement was waived for Bristol, it should have been waived for all suppliers, and (iii) because of Bristol's performance on the prior contract and its uncertain financial position, the Army should not have awarded another contract to Bristol. The following comments are provided in support of the nonconcurrences:

a. (Improper settlement) The audit report accurately describes the manner in which the amount of the contractor's claim was established. It confirms the fact that Bristol's records were kept on a total cost basis which did not permit the allocation of costs to specific problem areas. The GAO auditors do not allege that the contractor's costs were unreasonable, nor do they allege that the settlement was unfair or unreasonable. The Court of Claims and the Armed Services Board of Contract Appeals have held that an equitable adjustment of a claim may be made in the manner which was used here when (i) there is no more reliable method for computing damages because the contractor's accounting system is not structured so as to permit costs to be allocated to specific claims; (ii) the contractor's actual costs are found to be reasonable; and (iii) the evidence is sufficient to allow a fair and reasonable approximation.

b. (1) (Waiver of gauge requirement) The Army's procurement plan for the second contract awarded to Bristol considered the fully competitive procurement of these requirements in accordance with the latest technical data including the use of electrical gauges. However, the urgency of the requirement (UMMIPS Priority 02 in direct support of SEA) precluded this approach. The delivery requirements would not permit the lead times necessary to accomplish the procurement under these conditions. Therefore,

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a decision was made to procure the requirements by limited negotiations among current and previous producers on the basis of obtaining equipment identical to that previously produced by each manufacturer. It was agreed that the radios produced by all three suppliers were operationally and logistically interchangeable and technically equivalent with each other.

(2) The test gauge requirement was deleted from the Bristol solicitation to permit Bristol to bid, thereby broadening the competitive base. Since the gauges imposed no problem for the other two bidders, it was felt that inclusion of the gauge requirement would have a negligible price impact and should therefore be retained. In the event the bid prices were extremely close between Bristol and either of the other two bidders, the contracting officer had the option of deleting the requirement for gauges for the other bidders.

c. (1) (Impropriety of Second Award to Bristol) During the period October 1968 through May 1969, Bristol delivered 3,098 units and built up a cumulative total of 62 units in Group "C" test for a total of 3,160 radio sets actually produced as against the proposed schedule of 3,510. The 350 unit deficit was caused by work stoppage in March 1969 due to the financial strain experienced by Bristol immediately prior to the government's 1.4 million dollar settlement. This performance was considered in determining whether Bristol should be included in the sources to be solicited under the new procurement action. Particular attention was given to the fact that from January through May 1969 Bristol produced on an alternating basis 6 and 7 lots of 90 units each month in strict accordance with its promised delivery schedule (discounting March production in light of the work stoppage). This production demonstrated Bristol's capability to produce 540/630 units per month on a single shift operation and convinced contract officials that Bristol should be considered in the competition for the second award. On the new procurement it was expected that some amount of multi-shift operation would be used to meet the delivery requirement regardless of which firm received the award.

(2) In discussing the second contract award, GAO referred to an Electronic Command Industrial Engineering evaluation of Bristol's capabilities contained in a memorandum dated 27 June 1969. GAO indicated that contracting officials "chose to ignore" this evaluation. This evaluation did not allow for Bristol's expanding its production line by hiring additional people or by using an additional production work shift. For this reason, the contracting officials could not adopt this evaluation as their own. This is not a case of ignoring the Industrial Engineering evaluation but rather of making an assessment based upon all the information at hand, including that contained in the Industrial Engineering Report of 29 January 1968. Another consideration was that the contractor had the ability to produce approximately 500 units per month with

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a one shift production operation. It was reasonable to assume that with a two shift operation the contractor could produce at least 630 units per month.

d. (1) GAO referred to an ACO Report dated 14 May 1969 which stated that Bristol's financial position was precarious. The precarious financial position referenced by the ACO was relieved shortly thereafter by the payment of the claim settlement.

(2) The 28 June 1969 USAECOM preaward qualification survey found the contractor financially incapable because of a projected deficit cash position from 15 August 1969 through 15 October 1969. All data in evidence at that time indicated that subsequent to 15 October 1969 the contractor's cash position would be more than adequate. This period of cash shortages from 15 August 1969 through 15 October 1969 was considered to be a critical two months as it was determined that a significant amount of materials had to be purchased during those months to meet the delivery requirements of the then-proposed award.

(3) The 10 July 1969 evaluation found the contractor financially capable because data was presented by the contractor which resolved, to the Army's satisfaction, the problem outlined in the 28 June 1969 evaluation. GAO mentions only two of the three basic reasons why the Army reversed its position of financial capability. The third reason was that Bristol would only need minimum purchases of material to complete the then current AN/PRC-25 contract and several spares contracts.

(4) GAO states on Page 39 - "we believe serious doubt exists as to whether the add-on award should have been made to Bristol in view of delays experienced in the past coupled with Bristol's current production and financial uncertainties". With regard to Bristol's production experience, it should be noted that Bristol completed delivery of the balance of 2,494 units on time in the basic contract, falling behind only 150 units in September 1969 and curing this deficit in November 1969. As of this writing the Army is not aware of "current financial uncertainties". Referring to the two aforementioned Army evaluations (dated 28 June and 10 July 1969) the contractor liquidated all bank indebtedness by September 1969 and has been operating without bank support since that time. In a preaward survey dated 6 March 1970, the financial analyst of DCASR-Boston reported that: (i) the contractor had in excess of \$400,000 on deposit at its bank, (ii) Dun & Bradstreet reports the company has met its trade (vendor) invoices promptly in recent months and (iii) the contractor prepared a Cash Flow sheet, accompanied by considerable back-up data verified by its CPA, indicating no

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need for borrowed funds before April 1971. It is considered that Bristol was financially capable at that point in time (July 1969) for purposes of the proposed award. In retrospect, the Army is not aware of any development which would suggest that its 10 July 1969 finding of financial capability was improper.

e. At the time the contract for the add-on quantity was being considered, the production difficulties and financial problems had been resolved leaving no barrier to a Bristol award. GAO's comment relative to Bristol's delinquency on the add-on quantity cannot be related to the Preaward Evaluation.

V. ARMY POSITION ON GAO RECOMMENDATIONS.

There are no recommendations in the draft audit report.

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